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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison)	
Company, The Cleveland Electric Illuminating)	Case No. 09-21-EL-ATA
Company and The Toledo Edison Company for)	Case No. 09-22-EL-ATA
Approval of Rider FUEL and Related Accounting)	Case No. 09-23-EL-AAM
Authority)	

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 these proceedings. The
reasons supporting NOPEC's intervention are contained in the accompanying Memorandum
in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

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 these proceedings 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 128 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.

Currently, in an effort to obtain the benefits of competitive retail electric service ("CRES") for its member communities, as contemplated by Senate Bill 221, NOPEC is

finalizing a full requirements contract for its electric load with Gexa Energy Ohio, LLC, a CRES provider certified by this Commission and a subsidiary of FPL Energy ("FPLE"). These negotiations are pursuant to a Letter of Intent ("LOI") filed with the Commission in Case No. 08-935-EL-SSO.¹

II. BASIS FOR INTERVENTION

On January 9, 2009, OE, CEI, and TE (collectively the "Companies" or "FirstEnergy") filed their Application for the approval of their proposed Rider FUEL and related accounting authority. ("Application") The Companies request expedited consideration and approval of its Application by the Commission without the normal procedural opportunities for discovery and hearing pursuant to the Commission's rules.² Approval of Rider FUEL would result in potentially substantial rate increases to customers in the FirstEnergy service territories for a currently undetermined duration including customers within the NOPEC member communities.

NOPEC meets the standards in statute and rule for intervention in these cases. O.R.C. 4903.221; O.A.C. 4901-1-11.

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 wants to ensure that its large-scale governmental aggregation electricity customers in Northern Ohio will have the benefits intended by the General Assembly in Senate Bill 221,

¹ See *Direct Testimony of Robert M. Garvin, Attachment 1* (Sept. 29, 2008), Case No. 08-935-EL-SSO.

² Companies' Application, at 6-7.

and that this detour from Senate Bill 221's requirement for the Companies' to establish new standard service offers is appropriately addressed by the Commission.³

NOPEC also meets the criteria for intervention in R.C. 4903.221(B), which requires the PUCO, in ruling on motions to intervene, to consider the following:

- (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; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of the NOPEC's interest warrants the granting of intervention.⁴ NOPEC is a political subdivision of the State of Ohio and the largest governmental energy aggregator in the State. NOPEC's interest in this proceeding relates to the price of electricity paid by consumers within its member communities as well as ensuring that recently enacted Senate Bill 221 is adhered to by the Companies and fully implemented by the Commission.

The second statutory standard is the prospective intervenor's "legal position" and "its probable relation to the merits of the case."⁵ As noted above, NOPEC's legal position is as a large-scale governmental aggregator whose customers will be affected by the Operating Companies' FUEL Rider contained within its Application. NOPEC's positions are related, *inter alia*, to the potential that certain of the Operating Companies' proposals may be

³ See O.R.C. 4928.20(K) (mandating that the Commission encourage and promote large-scale governmental aggregation).

⁴ O.R.C. 4903.221(B)(1).

⁵ O.R.C. 4903.221(B)(2).

contrary to Senate Bill 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.”⁶ NOPEC’s intervention will not prolong or delay this proceeding, but would provide insights that will expedite the PUCO’s effective treatment of the Companies’ Application. 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.”⁷ NOPEC’s active participation in FirstEnergy’s recent electric security plan case, Case No. 08-935-EL-SSO, the genesis of this case, will contribute to the development of a more complete understanding of the meaning and impacts of the Application on large-scale governmental aggregation consumers, which is appropriate and necessary for Commission adjudication. NOPEC was previously granted intervention and participated actively in the Operating Companies’ recent SSO cases under Senate Bill 221, Case No. 08-935-EL-SSO and Case No. 08-936-EL-SSO

NOPEC also meets the standards for intervention under the PUCO’s rules of practice and procedure.⁸ 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

⁶ O.R.C. 4903.221(B)(3).

⁷ O.R.C. 4903.221(B)(4).

⁸ See O.A.C. 4901-1-11.

in OE and CEI service territories.⁹ NOPEC's interest is not adequately represented by existing parties. In addition, NOPEC is a consumer representative for those consumers within its boundaries as well.

NOPEC has explained the "nature" of its interest.¹⁰ No parties that represent NOPEC's interests are interveners in the case.¹¹

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.¹²

Finally, NOPEC's interventions would not unduly delay or unjustly prejudice any party.¹³ 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).

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

⁹ O.A.C. 4901-1-11(A)(2).

¹⁰ O.A.C. 4901-1-119B)(1).

¹¹ O.A.C. 4901-1-11(B)(2).

¹² O.A.C. 4901-1-119(B)(4).

¹³ O.A.C. 4901-1-11(B)(2).

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below, via First Class U.S. Mail, postage prepaid (also electronically), this 13th day of January 2009.



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