

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**PUCO**

In the Matter of the Application of The Ohio	)	
Edison Company, The Cleveland Electric	)	
Illuminating Company, and The Toledo	)	Case No. 09-0021-EL-ATA
Edison Company, for Approval of	)	Case No. 09-0022-EL-AEM
Rider FUEL and Related Accounting	)	Case No. 09-0023-EL-AAM
Authority	)	


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**MOTION TO INTERVENE OF THE CITY OF CLEVELAND**

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The City of Cleveland ("Cleveland" or "City") on behalf of itself and its residential and commercial citizens hereby moves to intervene as a full party of record in the above captioned proceedings 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, Cleveland submits that it has a real and substantial interest in these proceedings, that its interests cannot be adequately represented by any existing party to the proceedings, and that the Public Utility Commission of Ohio's ("Commission") disposition of the proceedings will impair or impede its ability to protect those interests. Cleveland further submits that the legal positions and issues that it will advance are relevant to the merits of the proceedings and that it intends to contribute in a unique manner to the full development and equitable resolution of the proceedings. Finally, Cleveland submits that granting this Motion will not unduly delay the proceedings or unjustly prejudice any existing party.

Respectfully Submitted,

  
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**MEMORANDUM IN SUPPORT OF THE  
MOTION TO INTERVENE OF THE CITY OF CLEVELAND**

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**I.     INTRODUCTION**

On January 9, 2009, the above captioned proceedings were initiated by The Ohio Edison Company, The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company (collectively "First Energy"). The proceedings were initiated after the Commission issued its decision regarding related Electric Security Plan ("ESP") (08-935-EL-SSO) and Market Rate Offer ("MRO") (08-936-EL-SSO) applications previously filed by First Energy. The City was an intervenor in the MRO and ESP proceedings.

First Energy initiated the current proceedings in order to obtain Commission review and approval of its proposed fuel Rider ("Rider FUEL") which, based upon the Commission's decisions in the ESP and MRO proceedings, would allow it to "apply a retail surcharge on all Standard Service Offer retail electric customers for the difference in all costs incurred by [First Energy] to purchase power for customers receiving generation service beginning with service rendered on January 1, 2009," along with costs for "the unbundled generation revenue" for First Energy's customer classes as set out in its current rate plan.

**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 Cleveland may intervene in the above-captioned Commission proceedings. 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 proceedings; (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)*). Accordingly, the following facts should be considered in light of the foregoing statutory and administrative rules.

**b. Cleveland's Motion To Intervene Should Be Granted Since It Was An Intervenor And Contributed Significantly In The ESP And MRO Proceedings.**

As stated above, the current proceedings are being filed by First Energy in response to and based upon the Commission's decisions in the ESP and MRO proceedings. The City of Cleveland was an intervenor in both the ESP and MRO proceedings and advocated the interests of the City as well as its corporate and residential citizens in those proceedings.

As a result of Cleveland's intervention and the intervention of several other intervenors, arguments were presented to the Commission resulting in Commission Orders denying the MRO

application and modifying the ESP application setting forth significantly lower electric rates and alternative terms and conditions than those originally proposed by First Energy. The current application for approval of Rider FUEL presents a similar risk for increased costs and detrimental terms and conditions for electric service as were presented in the MRO and ESP proceedings. Just as it did in the ESP and MRO proceedings, Cleveland requests that the Commission grant its request to intervene so that it may ensure that the interests of the City as well as its corporate and residential customers are protected.

**c. Cleveland Is Entitled To Intervention Because Rider FUEL Adversely Impact The City And Its Citizens.**

The above captioned proceedings have a real, substantial and adverse impact on Cleveland. Cleveland currently utilizes electric service from CEI to illuminate street lights and in 2007 alone it paid CEI over Two Million Seven Hundred Thousand Dollars (U.S. \$2,700,000) to cover energy costs to light its streets. In addition to the street lighting, the City is also a user of CEI retail electric service to power certain municipal buildings and facilities. As a result, in 2007 the City paid CEI over Fifteen Million Two Hundred Thousand Dollars (U.S. \$15,200,000) for retail electric services including the costs to light its streets. Thus, Cleveland is an extremely large user of CEI services and any surcharges as proposed in Rider FUEL will be a significant impact on the cost and manner in which Cleveland obtains its retail electric services.

Rider FUEL will also have a real, substantial, and adverse impact on residential customers. More than Fifty Percent (50%) of Cleveland residential customers rely upon CEI for electric service. Cleveland residential customers confront high unemployment rates and low wages. According to a recent Census Bureau American Community Survey, Cleveland is the poorest big city in the United States, with nearly a third of the City's residents living in poverty. The City has a special interest, if not a duty, to ensure that the electricity requirements of its

residents are continually served by readily available dependable electric service which is attainable at reasonable prices which are affordable to its economically challenged population.

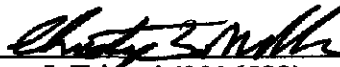
In addition to the impact on the City and on residential customers, the proceeding to consider the proposed Rider FUEL will also have a real, substantial, and adverse impact on Cleveland's commercial citizens using CEI retail electric service. Any cost increase resulting from the surcharge will have an economic development and job retention impact on an economy that cannot afford to lose current jobs or opportunities for future growth.

Accordingly, the City will consider securing an electric utility expert and will focus its participation in the proceedings on matters specifically impacting the City and its economically challenged residential citizens as well as commercial citizens.

### **III. CONCLUSION**

For the reasons set forth above, Cleveland respectfully requests that the Commission grant its request to intervene in the above-captioned proceedings. Cleveland's intervention will not unduly prolong or delay the proceedings. In contrast, Cleveland's intervention will contribute to the full development the factual issues to be resolved in the proceedings. Finally, no other party to the proceedings is capable of representing the interests of Cleveland as well as its residential and commercial citizens.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of Motion to Intervene of the City of Cleveland 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 20<sup>th</sup> day of January, 2009.

A handwritten signature in black ink, appearing to read 'Chris Miller', written over a horizontal line.

Christopher L. Miller



## **EXHIBIT A**

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Case 09-0022-EL-AEM  
Case 09-0023-EL-AAM  
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**EXHIBIT B**

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Case 09-0022-EL-AEM  
Case 09-0023-EL-AAM  
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