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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Energy Efficiency and )  
Peak Demand Reduction Program Portfolio of ) Case Nos. 09-580-EL-EEC  
Ohio Edison Company, The Cleveland Electric ) 09-581-EL-EEC  
Illuminating Company and The Toledo Edison ) 09-582-EL-EEC  
Company. )

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**MOTION TO INTERVENE  
AND RECOMMENDATIONS FOR MODIFICATIONS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy" or "Companies") request that the Public Utilities Commission of Ohio ("Commission" or "PUCO") approve the Companies' proposals regarding initial residential energy efficiency programs to assist in meeting the Companies' requirements under R.C. 4928.66.<sup>1</sup> OCC files this pleading on behalf of FirstEnergy's residential consumers.<sup>2</sup> The reasons the Commission should grant OCC's Motion are further set forth in the attached Memorandum in Support.

In addition, OCC files Recommendations regarding adjustments to the Companies' proposed programs.

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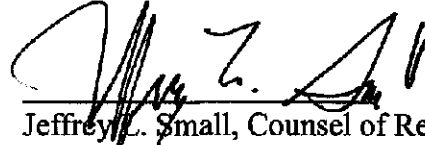
<sup>1</sup> Application at 1 (July 9, 2009) ("Application").

<sup>2</sup> OCC seeks intervention pursuant to R.C. Chapter 4911, R.C. 4903.221, and Ohio Adm. Code 4901-1-11.

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Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Jeffrey L. Small", is written over a horizontal line.

Jeffrey L. Small, Counsel of Record

Richard C. Reese

Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

(614) 466-8574

[small@occ.state.oh.us](mailto:small@occ.state.oh.us)

[reese@occ.state.oh.us](mailto:reese@occ.state.oh.us)

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**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE  
AND  
RECOMMENDATIONS FOR MODIFICATIONS**

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**I. INTRODUCTION**

R.C. 4928.66, which became law in 2008 with the signing of Sub. S.B. 221 ("S.B. 221"), requires Ohio electric distribution utilities to design and implement energy efficiency and peak demand reduction programs, beginning in 2009. On July 9, 2009, FirstEnergy filed an Application asking the Commission to approve two residential programs. OCC herein moves to intervene, and submits recommendations the PUCO should adopt regarding the Companies' proposals.

**II. MOTION TO INTERVENE**

R.C. 4903.221 provides, in part, that any person "who may be adversely affected" by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio's residential consumers may be "adversely affected" by this case, especially if the consumers were unrepresented in a proceeding that has ramifications regarding FirstEnergy's energy efficiency and peak demand reduction programs that involve residential customers and cost recovery for such programs. Thus, OCC satisfies this element of R.C. 4903.221.

R.C. 4903.221(B) requires the Commission to consider the following criteria in ruling on motions to intervene:

- (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 OCC's interest is representing FirstEnergy's residential consumers. This interest is different from that of any other party, and especially different from that of FirstEnergy whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for consumers will include advancing the position that consumers should be provided effective and efficient programs, and that rates that include program costs are reasonable. OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceeding. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC has participated in FirstEnergy's residential energy efficiency collaborative, and will continue to obtain and develop

information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a “real and substantial interest” according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a very real and substantial interest in this case where residential programs and residential rates for customers served by the Companies are at stake.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the “extent to which the person’s interest is represented by existing parties.” While OCC does not concede the lawfulness of this criterion, given the language of R.C. 4903.221(B), OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio’s residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed OCC’s right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC’s intervention and that OCC should have been granted intervention.<sup>3</sup>

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<sup>3</sup> See *Ohio Consumers’ Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20.

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. The PUCO should grant OCC's Motion to Intervene on behalf of Ohio residential consumers.

### **III. Recommendations for Modifications**

#### **A. Overview Regarding Timing**

FirstEnergy's consultant, Black & Veatch ("B&V"), is currently in its market study phase. B&V's report is due on September 1, 2009, and FirstEnergy has not entered the program design phase. Therefore, the two programs proposed by FirstEnergy for the residential class were filed before a market assessment and before completion of an economic ranking of measures and programs.

The Companies' justification for their filing is linked to compliance with the energy efficiency requirements in S.B. 221 (i.e. R.C. 4928.66).<sup>4</sup> FirstEnergy must make both energy efficiency and peak demand reductions, starting in 2009, according to the requirements stated in R.C. 4928.66. Care should be taken at this early stage in program development so that programs that have not been independently studied and tested are not approved without testing the programs.

#### **B. Compact Fluorescent Light Bulb Program**

The OCC generally supports a compact fluorescent light bulb ("CFL") program, but the program design should be modified. The Companies propose that they deliver 3.75 million CFLs through the program, with an estimated savings of 80 kilowatt-hours per bulb and an overall program-induced reduction in peak demand of 8.4 megawatts.<sup>5</sup>

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<sup>4</sup> Application at 1.

<sup>5</sup> Id., Appendix A.

The Companies propose a budget of \$5.00 per bulb, \$0.75 per bulb in administrative fees,<sup>6</sup> program benefits of \$39.8 million and \$18.8 million in program costs.<sup>7</sup> The Companies propose to distribute CFLs free of charge to residential and small commercial customers utilizing an on-line store, home delivery and shipping, and retailer coupons.<sup>8</sup> OCC recommends, however, a design that provides incentives to retailers to lower the incremental cost of CFLs at the point of sale. Such programs have been implemented in Ohio by Duke Energy Ohio<sup>9</sup> and the AEP-affiliated electric distribution utilities.<sup>10</sup>

The approach recommended by OCC more directly addresses informational, financial, and technical market barriers facing consumers, delivering more savings at a lower overall cost. The Companies should model their approach to a CFL program and present the results to its collaboratives. The presentation should include detailed total resource cost results, as approved by the Commission in proposed Ohio Adm. Code 4901:1-39-01(W),<sup>11</sup> and upon an amended filing that receives the approval of collaborative members.

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<sup>6</sup> Id., Attachment D.

<sup>7</sup> Id., Attachment C.

<sup>8</sup> Id., Attachment A.

<sup>9</sup> *In re Duke Energy Energy Efficiency Programs*, Case No. 06-91-EL-UNC, Order at 2 (July 11, 2007) (“market incentives,” referring to CFL program described in Application at 26 (January 24, 2006)).

<sup>10</sup> *In re AEP Standard Service Offer*, Case Nos. 08-917-EL-SSO, et al. at 45 (March 18, 2009), approving proposed “EE/PDR programs” also mentioned in Testimony of Karen Sloneker, Exhibit KLS-2 at 6 (July 31, 2008) (“help offset”). FirstEnergy mentions discussions regarding a CFL program in collaborative meetings. Application at 2-3. In those meetings, FirstEnergy representatives consistently represented that effective programs should have customer contributions (stated as “skin in the game”).

<sup>11</sup> The Commission’s rules are pending before the Joint Committee on Agency Rule Review.

### **C. Online Home Energy Education Tool**

OCC generally supports the Online Home Energy Education Tool offered to customers using the ACLARA software.<sup>12</sup> The Companies estimate a 15 percent residential customer penetration rate and a 300 kilowatt-hour per year savings per online audit.<sup>13</sup> The Companies estimate is based upon vendor marketing material provided by the vendor of the software.<sup>14</sup> OCC recommends that the Companies' measurement and verification of the energy savings be based on a statistical sampling of customers who performed online audits and that customer participation be tracked.

In addition to the foregoing statistical testing of results, the \$750,000 annual education and marketing costs for the program should decrease after the first year and every year thereafter. Such program costs are excessive for the program's follow-up years.

### **IV. CONCLUSION**

The Commission should grant OCC's intervention in this proceeding. In addition, for the reasons discussed herein, the Commission should adopt OCC's recommended modifications to FirstEnergy's proposed programs.

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<sup>12</sup> Application, Attachment B.


<sup>13</sup> Id.

<sup>14</sup> Application at 4.



Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

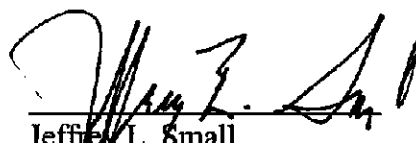
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**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-8574  
[small@occ.state.oh.us](mailto:small@occ.state.oh.us)  
[reese@occ.state.oh.us](mailto:reese@occ.state.oh.us)

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the Motion to Intervene and Recommendations for Modifications by the Office of the Ohio Consumers' Counsel was provided, via first class U.S. Mail, to the persons listed below this 10<sup>th</sup> day of August 2009.

  
Jeffrey L. Small  
Assistant Consumers' Counsel

## SERVICE LIST

Arthur E. Korkosz  
FirstEnergy Service Company  
76 South Main Street  
Akron, Ohio 44308

Duane Luckey  
Attorney General's Office  
Public Utilities Section  
180 East Broad Street, 9<sup>th</sup> Floor  
Columbus, Ohio 43215

Samuel C. Randazzo  
Lisa G. McAlister  
Joseph M. Clark  
McNees Wallace & Nurick  
21 E. State Street, Floor 17  
Columbus, Ohio 43215

Henry W. Eckhart  
50 W. Broad Street, Rm. 2117  
Columbus, Ohio 43215