

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
FirstEnergy Solutions for Certification) Case No. 09-933-El-REN
As an Eligible Ohio Renewable Energy)
Resource Generating Facility.)

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MOTION TO INTERVENE AND COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

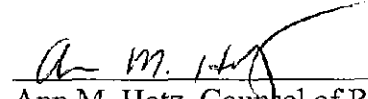
The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene¹ and files comments in this case in which FirstEnergy Solutions ("Applicant" or "Bay Shore"), seeks certification for its Bay Shore Units 2, 3, and 4 as an eligible Ohio renewable energy resource generating facility under R.C. 4928.01(A)(35). The granting of this certificate would allow Bay Shore to register the power production of its facilities as a renewable energy resource and to produce and sell renewable energy credits ("RECs") under R.C. 4928.65. Electric distribution utilities or electric services companies that need RECs to meet their renewable energy benchmarks under R.C. 4928.64 can purchase these RECs from certified renewable energy resources. OCC is filing on behalf of the residential utility consumers in Ohio. The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion to Intervene ("Motion") are further set forth in the attached Memorandum in Support.

¹ See 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 "Ann M. Hotz", is written over a horizontal line.

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

This case involves the review of the reasonableness and lawfulness of the Applicant's request for approval of its application filed under R.C.4928.01(A)(35) and R.C. 4928.65. OCC has authority under law to represent the interests of the residential utility customers of Ohio, pursuant to R.C. Chapter 4911. The Applicant is requesting certification as a renewable energy resource generating facility but produces the vast majority of its power through nonrenewable sources. Residential customers must contribute to the extra costs of electric distribution utilities or electric services companies purchasing RECs to meet their renewable energy benchmarks. Residential customers should have to contribute to the extra costs of purchasing RECs only to the extent that the RECs actually represent power generated from renewable sources. Residential customers should not have to pay extra costs for the applicant's power that is generated through nonrenewable RECs because such power will not provide long-term benefits of decreased demand for nonrenewable sources.

II. INTERVENTION

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 results in the certification of a power generating facility as an eligible renewable energy resource when it may not meet the requirements under R.C. 4928.01(A)(35) and R.C. 4928.65. Such a certification would result in residential electric customers paying the extra costs of a renewable resource without receiving the long-term benefits of renewable resources as contemplated under R.C. 4928.01(A)(35) and R.C. 4928.65.

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 the residential consumers of Ohio to ensure that when they pay a premium for a renewable resource, that renewable resource will provide the long-term benefits in reduced energy costs as contemplated under R.C. 4928.65 and R.C. 4928.01(A)(35). This interest is different

than that of any other party, and especially different than that of the Applicant whose advocacy includes its financial interests.

Second, OCC's advocacy for consumers will include advancing the position that residential customers should not have to pay a premium for renewable energy resources that do not actually provide the long-term benefits in reduced energy costs as contemplated under R.C. 4928.01(A)(35). This position ensues from the requirement that utilities must meet specific benchmarks in using renewable resources and the fact that renewable resources are limited in supply. The position results from the likelihood that utilities will have to pay a premium for power from those resources and will collect the premium from all customers, including residential customers. In other words, residential customers should pay rates that are no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. 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 the terms under which public utilities provide their services.

Third, OCC's intervention will not unduly prolong or delay the proceedings. 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, consistent with any matters that OCC determines to be issues for PUCO consideration and for 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 rates for service to residential customers are at issue.

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, 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.²

III. COMMENTS

The Applicant indicated that in the initial phase of the facilities it will use only 0%-5% renewable fuel and 100% to 95% nonrenewable fuel.³ The longer-term goal for

² See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

³ Application at 7, G10a.

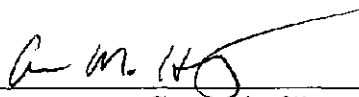
the facility is to use up to 20% renewable fuel and 80% nonrenewable fuel. R.C. 4928.65 requires that "one unit of credit shall equal one megawatt hour of electricity derived from renewable energy resources." Accordingly, during the initial phase, the Applicant should be certified for renewable credits of only 5% of the megawatt hours produced by Bay Shore. During the longer range time period the applicant should be certified for renewable credits of only up to 20% of the megawatt hours produced by Bay Shore.

IV. CONCLUSION

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. On behalf of residential consumers, the Commission should grant OCC's Motion to Intervene.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

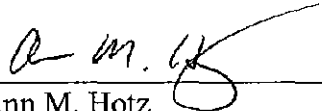


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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene and Comments* was served on the persons stated below by regular U.S. Mail, postage prepaid, on this 2nd day of November 2009.



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