

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

In the Matter of the Energy Efficiency	)	
and Peak Demand Reduction Program	)	
Portfolio of Ohio Edison Company,	)	Case No. 09-951-EL-EEC
The Cleveland Electric Illuminating	)	09-952-EL-EEC
Company, and The Toledo Edison	)	09-953-EL-EEC
Company.	)	

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MOTION TO INTERVENE  
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 in which the implementation of energy efficiency provisions that are part of the recently enacted Sub. S.B. 221 ("S.B. 221") is at issue.<sup>1</sup> The Application in this case proposes to count the effects of certain transmission and distribution ("T&D") projects towards meeting the requirements stated in S.B. 221 regarding energy efficiency requirements set forth in R.C. 4928.66(A)(1)(a).<sup>2</sup> OCC files on behalf of all the approximately 1.9 million residential utility consumers of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy" or "Company"). 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.

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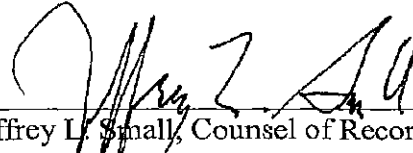
<sup>1</sup> See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

<sup>2</sup> See, e.g., Application at 1 (October 14, 2009).

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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.

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**MEMORANDUM IN SUPPORT**

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This case involves the review of the reasonableness and lawfulness of FirstEnergy's proposals to satisfy certain energy efficiency requirements that resulted from enactment of S.B. 221. OCC has authority under law to represent the interests of all the approximately 1.9 million residential utility customers of FirstEnergy, pursuant to R.C. Chapter 4911.

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 involves plans to implement energy efficiency requirements that could have a significant impact on the course and cost of providing electricity to consumers over an extended period of time. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

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 FirstEnergy in order to help assure that the energy efficiency provisions contained in S.B. 221 are properly implemented. This interest is different than that of any other party, and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for consumers will include advancing the position that actions taken by a utility as part of a portfolio of measures to satisfy the energy efficiency requirements stated in S.B. 221 must abide by the legal requirements set out in that enacted legislation and must be properly evaluated and verified. For example, OCC pointed out deficiencies in the manner in which FirstEnergy proposed to count energy savings from older vintage T&D in Case No. 09-384-EL-EEC,<sup>3</sup> and similar deficiencies appear to be important to the instant case. 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.

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<sup>3</sup> *In re FirstEnergy's First T&D Program Proposal*, Case Nos. 09-384-EL-EEC, et al., Motion to Dismiss or, In the Alternative, Motion for Hearing (June 24, 2009), jointly submitted by OCC, the Ohio Environmental Council, and the Natural Resource Defense Council.

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. OCC was significantly involved in the legislative discussions revolving around S.B. 221, including its provisions regarding energy efficiency. OCC has been involved in related cases, including Case No. 09-384-EL-EEC (mentioned above) and the Commission docket that has been opened (i.e. Case No. 09-512-GE-EL-UNC) to address the development of an Ohio-specific Technical Reference Manual that would set out energy savings from various utility programs. From this experience, the OCC has information and will develop additional 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 the energy efficiency provisions contained in S.B. 221 are subject to early interpretation by the Commission.

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

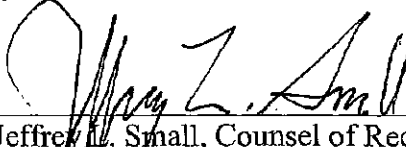
does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio's residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

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.<sup>4</sup>

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 Ohio residential consumers, the Commission should grant OCC's Motion to Intervene.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



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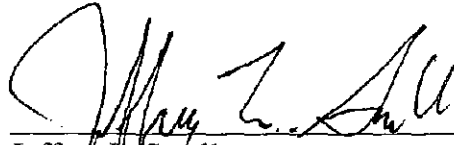
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<sup>4</sup> See *Ohio Consumers' Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this *Motion to Intervene* 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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