

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Cleveland Electric Illuminating Company)	
and American Brazing For Approval of a)	Case No. 10-1912-EL-EEC
Special Arrangement Agreement With a)	
Mercantile Customer.)	

**MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene¹ in this case in which the Cleveland Electric Illuminating Company ("FirstEnergy" or "Company") and American Brazing Company ("Brazing" or "Customer") (collectively with FirstEnergy, "Applicants") seek joint approval of a special arrangement under Ohio Adm. Code 4901:1-39-08(B). Approval of this arrangement would exempt Brazing from paying its share of FirstEnergy's Rider DSE2 based upon promised energy efficiency savings through a proposed energy efficiency project that has not been sufficiently demonstrated. If the energy efficiency project proposed for consideration does not produce the savings promised, the utility will be required to produce or purchase power and collect from residential customers their payment for power that the promised energy efficiency savings should have replaced. Approval would also allow FirstEnergy to attribute the energy reductions associated with Brazing's projects to the Company's energy efficiency and demand reduction achievements required for FirstEnergy to meet its benchmarks under S.B. 221 (R.C. 4928.66).

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

OCC is filing on behalf of approximately 668,000 residential utility consumers of the 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.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS’ COUNSEL

/s/ Ann M. Hotz

Ann M. Hotz, Counsel of Record
Assistant Consumers’ Counsel

Office of the Ohio Consumers’ Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-8574
hotz@occ.state.oh.us

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

This case involves the review of the reasonableness and lawfulness of the Applicants' request for approval of their special arrangement filed under Ohio Adm. Code 4901:1-39-08(B). OCC has authority under law to represent the interests of approximately 668,000 residential utility customers of FirstEnergy, pursuant to R.C. Chapter 4911.

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 Brazing's proposed energy efficiency programs not producing the energy savings promised. If the energy efficiency program does not produce the energy savings promised and FE is required to purchase additional power to meet its load, residential customers will be asked to pay for that power. 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 this case is where it will be considered whether the Applicants' proposal will result in sufficient energy savings to justify Brazing's opt-out of Rider DSE2. If the Application is granted and the energy savings are not sufficient to justify the opt-out, then all consumers will suffer from the economic and environmental consequences resulting from less energy savings than intended by R.C. 4928.66(A)(10). Under R.C. 4928.66(A)(10), FirstEnergy must meet certain energy savings in years 2009-2025 with money it collects from its customers through its Rider DSE2. In this regard, the issues for consideration include whether an opt-out for Brazing from paying the energy efficiency rider is justified by the energy savings achieved under the special arrangement. 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 the rates customers pay should be 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.

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 in which compliance with S.B. 221 benchmarks in a cost-effective manner is 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. 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

/s/ Ann M. Hotz

Ann M. Hotz, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-8574
hotz@occ.state.oh.us

² See *Ohio Consumers' Counsel v. Pub. 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 by the Office of the Ohio Consumers' Counsel* was served on the persons stated below by regular U.S. Mail, postage prepaid, on this 23rd day of June 2010.

/s/ Ann M. Hotz
Ann M. Hotz
Assistant Consumers' Counsel

SERVICE LIST

Duane Luckey, Chief
Attorney General's Office
Public Utilities Commission of Ohio
180 East Broad Street, 6th Floor
Columbus, OH 43215

Kevin P. Shannon
James F. Lang
Calfee, Halter & Griswold, LLP
1400 KeyBank Center
800 Superior Avenue
Cleveland, OH 44114

Alan C. Baethke
Vice President, Engineering
Paulo Products Company
5711 W. Park Avenue
St. Louis, MO 63110

Victoria Nofziger
Kathy Kolich
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/23/2010 2:08:23 PM

in

Case No(s). 10-1912-EL-EEC

Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Mrs. Mary V. Edwards on behalf of Hotz, Ann M. Ms. and Office of the Ohio Consumers' Counsel