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PUCO

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric) Case No. 10-0176-EL-ATA
Illuminating Company and The Toledo)
Edison Company for Approval of a)
New Rider and Revision of an Existing)
Rider)

REPLY TO FIRSTENERGY'S MEMORANDUM CONTRA MOTION TO
INTERVENE OF SUE STEIGERWALD; CITIZENS FOR KEEPING THE ALL-
ELECTRIC PROMISE (CKAP); JOAN HEGINBOTHAM AND; BOB SCHMITT
HOMES, INC.

I. INTRODUCTION

On May 27, 2010, a Motion to Intervene was filed by Sue Steigerwald, Citizens for Keeping the All-Electric Promise (CKAP), Joan Heginbotham and Bob Schmitt Homes, Inc. ("Movants") and served copies of their Motion on the parties by mail. On June 17, 2010, FirstEnergy filed a Memorandum Contra Movants' Motion to Intervene.

The Movants reply to FirstEnergy's Memo Contra and respectfully request that Movants' Motion to Intervene be granted.

II. ARGUMENT

FIRSTENERGY'S MEMO CONTRA WAS UNTIMELY AND SHOULD BE DISREGARDED.

Under Ohio Adm. Code 4901-1-12(B)(1), any party may file a memorandum contra within fifteen days after service of a motion. Movants served FirstEnergy with their Motion to Intervene on May 27, 2010 by U.S. mail. Mail service adds three days to the time period and therefore FirstEnergy's memorandum contra was due on or before

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June 14, 2010. FirstEnergy filed their memorandum contra three days late on June 17, 2010. FirstEnergy did not provide any explanation as to the lateness of their filing.

Consistent with previous rulings, the Commission has not considered the arguments made by a moving party when that pleading was untimely filed except when finding that there will be no undue delay or prejudice to the affected parties. In this matter, Movants will be highly prejudiced should the PUCO consider FirstEnergy's arguments since they attempt to eliminate Movants' right to participate in the proceeding. To remain consistent with those rulings, the Commission should not consider the arguments made by FirstEnergy in their Memorandum Contra.

FirstEnergy's filing was untimely and is highly prejudicial should it be considered. For those reasons, their Memorandum Contra should be disregarded. In the unlikely event that FirstEnergy's arguments are considered, the remainder of this reply shall address those arguments.

THE STANDARD FOR INTERVENTION IS SET FORTH BY O.R.C. 4903.221 AND INTERVENTION IS TO BE LIBERALLY ALLOWED

Ohio Revised Code Section 4903.221 sets forth the standard for intervention in PUCO matters. ORC 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. ORC 4903.221(B) requires the PUCO 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.

The Ohio Supreme Court has also weighed in on this issue and has held that intervention "ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO." Movants have demonstrated that they *meet the standards* set forth by the Ohio Revised Code and the Ohio Supreme Court.

A. Movants Should Be Permitted To Intervene

The Commission should allow Movants to intervene in this proceeding. In their Motion to Intervene, Movants have demonstrated their real and substantial interest in the proceeding. They have demonstrated their interest and involvement in the proceeding prior to their Motion to Intervene and they have demonstrated the financial impact that the proceedings will have on them. They have explained how their interests are unique and separate from other ratepayers and therefore deserving of separate representation. Most importantly, they have demonstrated that they *meet the standards* set forth in the Ohio Revised Code. For these reasons alone, their Motion to Intervene should be permitted.

1. Movants' interests are not adequately represented by OCC

In many ways, the interests of the OCC and the Movants are aligned. There are times however that those interests may diverge. The Movants are all-electric ratepayers who have had a different rate structure than non-all-electric ratepayers for almost forty years. FirstEnergy has argued that other ratepayers are subsidizing the all-electric discount. If that is true and the OCC is responsible for representing all ratepayers then it stands to reason that the OCC at some point may not agree to have other ratepayers

subsidize the all-electric customer. If the OCC had this stance then the interests of the Movants and the OCC would be in direct opposition and therefore the OCC would not adequately represent the interests of Movants.

2. Intervention by individual residential customers will not delay this proceeding.

FirstEnergy argues that allowing Movants the opportunity to intervene will somehow cause the entire PUCO process to crash and be crushed by the number of participants and that interested persons are already afforded the opportunity to participate in this proceeding. The Movants are represented by one attorney. FirstEnergy alone is represented by three attorneys if you count the counsel of record and the two listed on their filing from Jones Day. Adding one more to the mix of approximately ten attorneys already a party to the proceeding should not cause an undue delay in this matter. In addition, the Movants have met the standards set forth in the Ohio Revised Code for Intervention. The fact that Movants could have meaningful participation in other ways does not permit their right to intervene to be taken away.

3. Movants will significantly contribute to the development of factual issues in this proceeding.

Movants are the sole reason that this case is still pending before the PUCO. If not for their involvement, the inaccurate information given by FirstEnergy to the PUCO and the OCC would not have been challenged and the all-electric customer would have had their electric rates increase exponentially without fanfare. The fact that Movants have not been contacted to have "meaningful participation" in this proceeding beyond what they have already provided is exactly why they should be granted intervention. FirstEnergy's arguments fail because it was FirstEnergy's failure to provide factual information in this

proceeding that has led us to this point. During a meeting with Movants' representatives prior to their filing, Chairman Schreiber of the PUCO stated that he learned more about this issue during an hour meeting than he did in the months prior. Since Movants have demonstrated an ability to provide factual information, FirstEnergy's argument against intervention must fail.

B. Mrs. Heginbotham and Bob Schmitt Homes, Inc. have a "Real and Substantial Interest in this Proceeding."

Mrs. Heginbotham and Bob Schmitt Homes, Inc. have a real and substantial interest in this proceeding. Bob Schmitt Homes, Inc. has been building all-electric homes for several decades. FirstEnergy partnered with Bob Schmitt Homes, Inc. to promote and sell all-electric homes. In the company's current subdivision, the phases have been planned and developed as all-electric. All of those plans and phases were reviewed and approved by FirstEnergy prior to the January 1, 2007 elimination of the all-electric discount rate. Those phases do not have an alternative energy source. They must be built as all-electric homes. The elimination of the all-electric discount has created a real and substantial interest on behalf of Bob Schmitt Homes, Inc. Mrs. Heginbotham's home was built prior to the artificial discount cut-off date of January 1, 2007. Unfortunately, she did not purchase that home until after that date. She lives in the Bob Schmitt Homes, Inc. subdivision referenced above. Despite her home being built prior to the artificial deadline and the fact that her home has no reasonable alternative energy source to heat and cool her home, she has been denied the all-electric discount. Both Bob Schmitt Homes, Inc. and Mrs. Heginbotham have demonstrated that they have met the standards set forth by the Ohio Revised Code for intervention.

III. CONCLUSION

For the reasons above, the Movants' respectfully request that the Commission disregard FirstEnergy's Memo Contra or in the alternative, reject their arguments and grant Movants' Motion to Intervene.

Respectfully submitted,

Kevin Corcoran
Corcoran & Associates Co., LPA
8501 Woodbridge Court
North Ridgeville, OH 44039
440-316-4821 telephone
440-327-4684 fax
kevinocorcoran@yahoo.com

Attorney for Sue Steigerwald; Citizens For
Keeping The All-Electric Promise (CKAP);
Joan Heginbotham and; Bob Schmitt
Homes, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply to FirstEnergy's Memorandum Contra was served upon the following parties of record this 25th day of June 2010 via first class US mail, postage prepaid.


Kevin Corcoran

Duane Luckey
Attorney General's Office
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215
Duane.luckey@puc.state.oh.us

Samuel C. Randazzo
Lisa G. McAlister
Joseph M. Clark
McNees Wallace & Nurick LLC
21 E. State St., 17th Fl
Columbus, OH 43215
sam@mwncmh.com
lmcaster@mwncmh.com
jclark@mwncmh.com
**Attorneys for Industrial Energy Users-
Ohio**

Thomas J. O'Brien
Bricker & Eckler LLP
100 S. Third St
Columbus, OH 43215
tobrien@bricker.com
**Attorney for Ohio Hospital Association
and Ohio Manufacturers' Association**

Richard L. Sites
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620
ricks@ohanet.org
Attorney for Ohio Hospital Association

Attorney Examiners:

Kim.Bojko@puc.state.oh.us

Gregory.Price@puc.state.oh.us

James W. Burk

FirstEnergy Service Company

76 South Main Street

Akron, OH 44308

burkj@firstenergycorp.com

Jeffrey L. Small

Maureen Grady

Christopher Allwein

Office of Ohio Consumer's Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215

small@occ.state.oh.us

grady@occ.state.oh.us

allwein@occ.state.oh.us