

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

PUCO

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In the matter of the 2010 Long-Term)
Forecast Report of the Cleveland Electric) Case No. 10-504-EL-FOR
Illuminating Company, Ohio Edison)
Company, the Toledo Edison Company)
and American Transmission Systems Inc.)

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


The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where the Cleveland Electric Illuminating Company, Ohio Edison Company, the Toledo Edison Company, (collectively "FirstEnergy's Operating Companies") and American Transmission Systems (collectively "FirstEnergy" or "Companies") filed their forecast of loads (electricity demand) and the resource plan to meet that load, which could have a significant effect on Ohio residential utility customers.¹ The OCC files this Motion to Intervene ("Motion") on behalf of the approximately 1.9 million Ohio residential utility consumers of FirstEnergy's Operating Companies. The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant the OCC's Motion are further set forth in the attached Memorandum in Support.

¹ See R.C. Chapter 4911, R.C. 4903.221, R.C. 4935.04(E)(1) and Ohio Adm. Code 4901-1-11.

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Respectfully submitted,

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In the matter of the 2010 Long-Term)
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MEMORANDUM IN SUPPORT

I. INTRODUCTION

This is a forecasting case in which the Commission investigates, among other things, whether sufficient energy resources are available for an electric utility to meet the energy demands of its customers and how the electric utility will meet the energy demands of its customers. R.C. 4935.01(A)(1) requires the Commission to

[e]stimate statewide and regional needs for energy for the forthcoming five- and ten-year periods which, in the opinion of the commission, will reasonably balance requirements of state and regional development, protection of public health and safety, preservation of environmental quality, maintenance of a sound economy, and conservation of energy and material resources. Other factors and trends which will significantly affect energy consumption such as the effects of conservation measures shall also be included....

To assist the Commission in this effort, R.C. 4935.04(C) requires major utilities in Ohio to file with the PUCO a long-term forecast report and specifies the content of the report.² The Commission has adopted rules implementing this statute in Ohio Adm. Code Chapters 4901:5-1, 4901:5-3 and 4901:5-5.

² For electric transmission purposes, a major utility is defined as "[a]n electric transmission line and associated facilities of a design capacity of one hundred twenty-five kilovolts or more...." R.C. 4935.04(A)(1)(a).

This case involves the review of the Long-Term Forecast Report the Companies submitted on April 15, 2010. The OCC has authority under law to represent the interests of the approximately 1.9 million Ohio residential utility customers of FirstEnergy's Operating Companies, pursuant to R.C. Chapter 4911.

II. INTERVENTION

A. Intervention Should be Granted as of Right Under R.C. 4935.04(E)(1).

Ohio Adm. Code 4901-1-11(A)(1) provides that a person "shall be permitted to intervene" when an Ohio statute "confers a right to intervene." The General Assembly recognized the significant interests of residential electric customers in forecast cases when it directed the Commission to provide for the OCC's intervention in long-term forecast cases, so that the OCC can be heard and represented by counsel.

Specifically, R.C. 4935.04(E)(1) states:

*The power siting board, the office of consumers' counsel, and all other persons having an interest in the [long-term forecast report] proceedings shall be afforded the opportunity to be heard and to be represented by counsel.*³

The specific reference to the OCC in the statute provides the OCC the right to intervene in long-term forecasting cases. The Commission should grant the OCC's Motion.

B. Intervention Under R.C. 4903.221 and Ohio Adm. Code 4901-1-11(A)(2)

Although R.C. 4935.04(E)(1) is sufficient for granting the OCC's intervention, the OCC also meets the intervention criteria of R.C. 4903.221. That statute provides, in part, that any person "who may be adversely affected" by a PUCO proceeding is entitled

³ Emphasis added.

to seek intervention in that proceeding. The interests of Ohio's residential consumers may be adversely affected by this case, especially if these consumers were unrepresented in a proceeding affecting the reliability of the Companies' service, as reflected in its long-term forecast of loads and the adequacy of its resource plans to meet that load. 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 the OCC's interest is representing the residential consumers in order to protect the consumers' interests. This interest is different from that of any other party and especially different from that of the utility, whose advocacy includes the financial interest of stockholders.

Second, the OCC's advocacy for consumers includes advancing the position that long-term forecasts of the loads for FirstEnergy must be realistic and that resource plans to meet that load must be adequate and effective, so that adequate service to customers of FirstEnergy's Operating Companies at a reasonable rate is furnished.⁴ Additionally, the PUCO should direct the Companies to undertake a comprehensive load research study

⁴ R.C. 4905.22.

directed at measuring the consumption, on a schedule by schedule basis, of the “all-electric” customers. This should be undertaken in order to provide the Commission with information about the particular usage of these customers which will assist the Commission in developing the long-term solutions it is reportedly seeking in Case No. 10-176.⁵ The Commission should also direct the Companies to report on the efforts undertaken to develop energy efficiency programs to address the specific needs of these customers, along with the impact of potential programs on the load and resource plans of the Companies. Finally, the Commission should direct the Companies to evaluate a number of different scenarios to determine the impact that future discounted rates for all-electric customers would have on the Companies’ load. The 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, the OCC’s intervention will not unduly prolong or delay the proceedings. The 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, the OCC’s intervention will significantly contribute to the full development and equitable resolution of the factual issues. The OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

The OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that the OCC satisfies in the Ohio Revised Code).

⁵ See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating company, and the Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA, Finding and Order at 3 (Mar. 3, 2010).

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, the OCC has a real and substantial interest in this case where the availability of adequate service to customers of FirstEnergy’s Operating Companies at a reasonable rate is at stake.

In addition, the 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 the OCC already has addressed and that the 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 the OCC does not concede the lawfulness of this criterion, the OCC satisfies this criterion because it is uniquely designated as the statutory representative of residential utility consumers’ interests. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed the OCC’s right to intervene in PUCO proceedings in ruling on an appeal in which the OCC claimed the PUCO erred by denying the OCC’s intervention. The Court found that the PUCO abused its discretion in denying the OCC’s intervention and that the OCC should have been made a party to the case.⁶

III. CONCLUSION

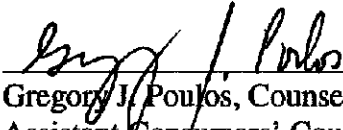
R.C. 4935.04(E) confers upon the OCC the right to intervene in this proceeding. That authority is, in and of itself, sufficient basis for granting the OCC’s motion to intervene. The OCC also meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention.

⁶ *Ohio Consumers’ Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

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

Respectfully submitted,

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CONSUMERS' COUNSEL

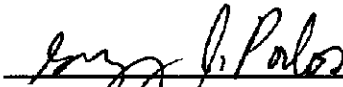


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene was served on the persons stated below via First Class United States Mail, postage prepaid, this 1st day of July 2010.



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