

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review)
of the Participation of The Cleveland)
Electric Illuminating Company, the Ohio) Case No. 12-814-EL-UNC
Edison Company, and The Toledo Edison)
Company in the May 2012 PJM)
Reliability Pricing Model Auction.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where the Public Utilities Commission of Ohio ("PUCO" or "Commission") seeks information regarding "energy efficiency and peak demand reduction offers into the May 2012 PJM RPM Auction for the 2015/2016 year"¹ in the portion of the State served by the electric distribution utilities affiliated with FirstEnergy Corp. ("FirstEnergy EDUs" or "Companies").² The PUCO rightly noted that the Companies "have an obligation to take all reasonable and cost-effective steps to avoid unnecessary RPM price increases for their customers."³ The OCC files on behalf of all the approximately 1.9 million residential utility customers of the FirstEnergy EDUs. The reasons the Commission should grant the OCC's Motion are further set forth in the attached Memorandum in Support.

¹ Entry at 3, ¶(8) (February 29, 2012). "RPM" refers to the Reliability Pricing Model used by the PJM RTO.

² See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

³ Entry at 2, ¶(4) (February 29, 2012).

Respectfully submitted,

BRUCE J. WESTON

/s/ Jeffrey L. Small

Jeffrey L. Small, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (614) 466-1292

small@occ.state.oh.us

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review)	
of the Participation of The Cleveland)	
Electric Illuminating Company, the Ohio)	Case No. 12-814-EL-UNC
Edison Company, and The Toledo Edison)	
Company in the May 2012 PJM)	
Reliability Pricing Model Auction.)	

MEMORANDUM IN SUPPORT AND COMMENTS

I. SUPPORT OF MOTION TO INTERVENE

This case involves potential offers into the PJM RPM auction from areas served by the FirstEnergy EDUs, a matter that will ultimately affect competitive bidding and competitive supply offers to residential and other retail customers of the FirstEnergy EDUs. The OCC has authority under law to represent the interests of all the approximately 1.9 million residential utility customers of the FirstEnergy EDUs, 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 customers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding that has impacts on standard service offer and competitive supply offers to residential customers. 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 customers of the FirstEnergy EDUs in this case involving offers into the PJM RPM auction. 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, the OCC's advocacy for residential customers will include advancing the position that rates should be no more than what is reasonable and lawful under Ohio law. 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 Commission has asked for comments by "interested persons" regarding the Companies' report to the PUCO.⁴ The OCC will obtain and develop information that the PUCO should consider.

⁴ Entry at 3, ¶9 (February 29, 2012).

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). To intervene, a party should have a “real and substantial interest” according to Ohio Adm. Code 4901-1-11(A)(2). As the advocate for residential utility customers, the OCC has a very real and substantial interest in this case where potential participation in a PJM RPM auction will affect the prices paid by residential customers for their service.

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 in that it uniquely has been designated as the state representative of the interests of Ohio’s residential utility customers. 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 deciding two appeals in which the OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying the OCC’s interventions and that the OCC should have been granted intervention in both proceedings.⁵

⁵ See *Ohio Consumers’ Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

The 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 customers, the Commission should grant the OCC's Motion to Intervene.

II. COMMENTS

By Entry dated February 29, 2012, the Commission ordered the Companies to file a report “detailing potential energy efficiency and peak demand reduction offers into the May 2012 PJM RPM auction for the 2015/2016 year.”⁶ The Entry stated that the report “should include all cost-effective energy efficiency and peak demand reductions achievable by 2015.”⁷ The Entry also stated that the “Companies should provide PJM with a forecast of the demand and voltage reduction achievable by 2015”⁸ On March 29, 2012, the Companies submitted their report (“FE Report”). That filing is the subject of these comments, which are submitted in response to the Commission’s invitation to “[i]nterested persons . . . [to] file comments . . . no later than April 10, 2012.”⁹

The FE Report fails to comply with the Entry’s requirement to identify all cost-effective energy efficiency (“EE”) and peak demand reductions (“PDR”) achievable by 2015. The FE Report shows that the Companies do not plan to *offer* any EE or PDR into

⁶ Entry at 3, ¶(8).

⁷ Id.

⁸ Id.

⁹ Id. at 3, ¶(9).

the May 2012 RPM auction, but they have not provided a discussion of the EE and PDR *achievable* by 2015.

The FE Report discusses the Companies' disinclination to offer demand response ("DR") into the PJM auctions because of risk to the Companies, stating that participation "creat[es] a significant financial and legal risk."¹⁰ The risks to the Companies appear to be greatly exaggerated, and rest on misconceptions about PJM's RPM construct.

The FE Report states that "Incremental Auctions may be held if needed to true up or adjust the amount of capacity procured in a given BRA against changes in load or resources."¹¹ This statement by the FirstEnergy EDUs is incorrect in two respects. First, three incremental auctions ("IAs") are held for *every* PJM delivery year, and these auctions are not contingent on any showing of "need." Second, the primary purpose of the IAs is to allow market participants to adjust their capacity commitments; any true-up or adjustment of the total capacity procured by PJM is a secondary purpose. The ability to adjust capacity commitments in any of the three incremental auctions that will be held for the 2015/2016 delivery year (the last of which is held three months before the delivery year) mitigates the risk of "financial penalties, and possibly other sanctions"¹² for failing to meet a capacity supply obligation about which the FE Report expresses concern.

There is little risk to the Companies, and substantial upside potential, to their offering EE and PDR in the May 2012 Base Residual Auction ("BRA"). The Companies will have the ability to acquire replacement resources in any of the three IAs if they clear

¹⁰ FE Report at 3 (March 30, 2012).

¹¹ Id. "BRA" refers to the PJM Base Residual Auction.

¹² Id.

EE and PDR in this auction and later determine that their ability to deliver EE or PDR will be somewhat less than the cleared quantity. Such replacement resources are typically available in IAs at prices considerably lower than the clearing prices in BRAs.¹³ The Companies' disinterest in bidding DR into the BRA may be less associated with their asserted risk than with the net impact that such transactions might have on its total corporate outcome. The affiliates of the FirstEnergy EDUs hold thousands of megawatts of generation capacity. Therefore, the FirstEnergy EDUs may not want to help lower the clearing price in the BRA that will affect the price obtained by generating units that are owned by their affiliates.¹⁴

The FE Report also expresses concern about the measurement and verification ("M&V") plan required for the eligibility of EE resources.¹⁵ However, the PJM Tariff only requires that the M&V plan describe the "methods and procedures" that will be applied.¹⁶ From the PJM requirements for participation in the RPM auctions, an offering for a "Guaranteed Load Drop" should be supported by a "[g]eneral plan to procure customers [and] "[i]nformation to support the market potential and share of customers . . . the program will be focusing on" as well as "[a]ssumptions that went into estimates of the

¹³ See, e.g., Monitoring Analytics, State of the Market Report for PJM, Vol. II Table 4-21 at 109 (showing that over eight delivery years under RPM, incremental auction prices have nearly always been considerably lower than the base residual auction prices for the same delivery year).

¹⁴ The BRA clearing price is capped at \$537.33/MW-day. <http://pjm.com/markets-and-operations/rpm/rpm-auction-user-info.aspx#Item09>. The 2012/13 Reliability Pricing Model (RPM) BRA cleared 136,143.5MW of unforced capacity at a resource clearing price of \$16.46/MW-day, a decrease of \$93.54/MW-day from the 2011/12 BRA. <http://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/2012-13-base-residual-auction-report-document-pdf.ashx>.

¹⁵ Id. at 5.

¹⁶ PJM Tariff Attachment DD-1, Section M.2.

Nominated DR Value”¹⁷ The Companies’ history of dealing with demand responsive load, including dealings with industrial customers well before legislative changes such as passage of S.B. 221, would apparently support their participation in the PJM auctions using DR resources.

The FE Report contains a short, largely vacuous section on the topic of the forecasts that the Companies will provide to PJM.¹⁸ But the FirstEnergy EDUs state that they “do not have a forecast of demand and voltage reductions available by 2015 to give to PJM.”¹⁹ Aside from the specific DR resources that may be available under the existing rate plan for the FirstEnergy EDUs, Ohio energy efficiency and peak demand reduction requirements are codified in R.C. 4928.66. Those requirements exist without respect to the timing of any particular rate plan, and should be factored into all forecasts of demand provided by the FirstEnergy EDUs to PJM. The Commission may want to inquire further into the Companies forecasting that was partly the subject of the Entry dated February 29, 2012.²⁰

III. CONCLUSION

The OCC moves to intervene in order to represent the approximately 1.9 million residential customers of the FirstEnergy EDUs. The Commission should grant the OCC’s Motion to Intervene.

¹⁷ Requirements for Offering Planned Demand Resources in RPM Auctions, available at: <http://www.pjm.com/markets-and-operations/rpm/~media/markets-ops/rpm/rpm-auction-info/planned-demand-resource-rpm-auction-participation-information.ashx>.

¹⁸ Id. at 8, Section “II.” That section of the FE Report refers to the “Commission . . . interest[] in issues related to the electric generating assets of . . . FirstEnergy Solutions. . . .” Id. Those assets are unrelated to the FirstEnergy EDU’s “peak load forecasting processes.” Id.

¹⁹ Id.

²⁰ Entry at 3, ¶(8).

The OCC submits Comments on the FE Report that was filed on March 29, 2012. In the FE Report, the Companies fail to comply with the requirement to identify cost-effective EE and PDR achievable by 2015. They also show a lack of interest in taking readily available steps to offset the impact that recently announced retirements will likely have on resource adequacy and capacity costs for Ohio customers.

Respectfully submitted,

BRUCE J. WESTON

/s/ Jeffrey L. Small

Jeffrey L. Small, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (614) 466-1292

small@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene and Comments* was served on the persons stated below via electronic transmission this 10th day of April 2012.

/s/ Jeffrey L. Small

Jeffrey L. Small

Assistant Consumers' Counsel

SERVICE LIST

William Wright
Public Utilities Commission of Ohio
180 E. Broad St., 6th Fl.
Columbus, OH 43215
William.wright@puc.state.oh.us

Carrie M. Dunn
Kathy J. Kolich
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
cdunn@firstenergycorp.com
kjkolich@firstenergycorp.com

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45839-1793
cmooney2@columbus.rr.com

Lisa G. McAlister
Matthew W. Warnock
J. Thomas Siwo
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
lmcalister@bricker.com
mwarnock@bricker.com
tsiwo@bricker.com

Attorney for Ohio Partners for Affordable Energy

Attorneys for the OMA Energy Group

Trent Dougherty
Cathryn N. Loucas
The Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449
trent@theOEC.org
cathy@theOEC.org

Samuel C. Randazzo
Frank P. Darr
Matthew R. Pritchard
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com

Attorneys for the Ohio Environmental Council

Attorneys for Industrial Energy Users-Ohio

David F. Boehm
Michael L. Kurtz
Jody M. Kyler
Boehm, Kurtz & Lowry
36 East Seventh St., Suite 1510
Cincinnati, OH 45202
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jkyler@BKLawfirm.com

Attorneys for Ohio Energy Group

William.wright@puc.state.oh.us
cdunn@firstenergycorp.com
kjkolich@firstenergycorp.com
cmooney2@columbus.rr.com
lmcalister@bricker.com
mwarnock@bricker.com
tsiwo@bricker.com
trent@theOEC.org
cathy@theOEC.org
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jkyler@BKLawfirm.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/10/2012 9:34:17 AM

in

Case No(s). 12-0814-EL-UNC

Summary: Motion Motion to Intervene and Comments by the Office of the Ohio Consumers' Counsel