

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Ohio Schools Council, Ohio School Boards Association, Ohio Association of School Business Officials, and Buckeye Association of School Administrators, dba Power4Schools,	)	
	)	
Complainants,	)	Case No. 14-1182-EL-CSS
	)	
v.	)	
	)	
FirstEnergy Solutions Corp.,	)	
	)	
Respondent.	)	

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**REPLY TO POWER4SCHOOLS' MEMORANDUM CONTRA  
OHIO MANUFACTURERS' ASSOCIATION'S  
MOTION TO INTERVENE**

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**I. Introduction**

On July 3, 2014, the Ohio Schools Council, Ohio School Boards Association, Ohio Association of School Business Officials, and Buckeye Association of School Administrators, dba Power4Schools (collectively, Power4Schools), filed a complaint with the Public Utilities Commission of Ohio (Commission) against FirstEnergy Solutions Corp. (FES), asserting, inter alia, that FES improperly assessed, in participating members' June 2014 electric utility bills, additional charges for ancillary services based upon usage during the month of January 2014. Subsequently, numerous parties which have similarly been assessed pass-through costs from FES, including The Timken Company, Marathon Petroleum Company, Wausau Paper Towel & Tissue LLC, ASHTA Chemicals Inc., Columbus Castings, The Lincoln Electric Company, Delphi Corporation, and Landmark Plastic Corporation, Navco Enterprises.Com, Inc., Navco

Enterprises of P.V., Inc., Navco Enterprises, Inc., Foodlife International, Inc., Navco Enterprises of O.V., Inc., and Navco of York Road, Inc. (collectively, Industrial Customers) and the Ohio Manufacturers' Association (OMA), on behalf of its members, filed motions to intervene in the matter. On August 4, 2014, Power4Schools filed a memorandum contra the motions to intervene (Memorandum Contra) filed by Industrial Customers and OMA (collectively, Intervenors), advising the Commission to deny Intervenors' motions to intervene because their interests in the proceeding "are too speculative" and because "the disposition of this proceeding...will not impair or impede the Intervenors' ability to protect their interests...[.]"<sup>1</sup> Notwithstanding Power4Schools' assertions to the contrary, numerous OMA members, represented in this proceeding by OMA, have real and substantial interests in this matter which may be adversely affected by any temporary or final outcome in this proceeding, and which cannot be adequately represented by any existing parties. For these reasons, OMA respectfully requests that the Commission grant its motion to intervene in this proceeding.

## **II. Argument**

In its Memorandum Contra, Power4Schools asserts that OMA's interests in this proceeding are "limited to advocacy on behalf of its members on policy issues."<sup>2</sup> This assertion is simply incorrect. While OMA has policy concerns regarding the precedential nature of this proceeding and any decision issued by the Commission, OMA clearly and specifically indicated in its Motion to Intervene and Memorandum in Support (OMA Motion to Intervene) that numerous OMA members, like the individual members of Power4Schools, "are also customers who purchase electric generation services from FES, have been improperly assessed (or noticed that they will be assessed for) charges for ancillary services based upon their usage during the

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<sup>1</sup> See Memorandum Contra at 2 (August 4, 2014).

<sup>2</sup> Id. at 6.

month of January 2014, and will be affected by the Commission's determination in this matter."<sup>3</sup> Since the filing of OMA's intervention, OMA's members have in fact been assessed the charges for an increase in ancillary services, which have been invoiced by FES as an "RTO Expense Surcharge." Pursuant to OMA members' individual Customer Supply Agreements and Fixed Price Pricing Attachments, OMA members have also disputed FES' right to bill and collect the RTO Expense Surcharge.

Power4Schools asserts that OMA has not disclosed the language of its members' contracts with FES in this docket and, for that reason, its interests are too speculative for the Commission to grant its motion to intervene. OMA respectfully submits that, given the fact that Power4Schools complaint was admittedly "heavily redacted as to contractual terms[,]""<sup>4</sup> the portions of the contract that were viewable were so similar in nature to many OMA members' contracts as to compel OMA to file a motion to intervene in this proceeding to protect its members' interests.

Power4Schools suggests that the only permissible means by which OMA can protect its members' interests is to "initiate [its] own complaint proceeding...[.]""<sup>5</sup> However, its suggestion contradicts statute and the Commission's rules.<sup>6</sup> To the extent that the Commission issues any findings or orders in this proceeding, those findings and orders may directly apply in any other case involving the same types of facts or issues. As explained previously, from the information actually available in the public version of Power4Schools' complaint, the contracts at issue appear to include many of the same operative terms as those included in OMA members'

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<sup>3</sup> OMA Motion to Intervene at 4 (July 29, 2014).

<sup>4</sup> Memorandum Contra at 5.

<sup>5</sup> Id.

<sup>6</sup> See generally Section 4903.221, Revised Code, and Rule 4901-1-14, Ohio Administrative Code (permitting intervention to any person demonstrating the requirements set forth therein).

contracts with FES. Thus, the disposition of the proceeding will likely impair or impede OMA's ability, on behalf of its affected members, to protect the interests at issue in this case. Accordingly, prudence dictated that OMA intervene in this proceeding in order to protect its members' interests.

In further support of its Memorandum Contra, Power4Schools asserts that OMA has not alleged, in its motion to intervene and memorandum in support, that it "has a contract with FES or is being charged the RTO Expense Surcharge."<sup>7</sup> As OMA established above and in its motion to intervene, however, OMA is participating in this proceeding on behalf of its affected members. Further, the fact that OMA did not specifically assert that its members are being charged the "RTO Expense Surcharge" is of little consequence. OMA clearly indicated in its motion to intervene and memorandum in support that FES has assessed a number of its members improper charges related to ancillary services.<sup>8</sup> OMA did not specifically refer to the charges at issue as "RTO Expense Surcharges" because Power4Schools failed to use that term anywhere in the body of its complaint. As such, Power4School's contention is without merit.

### **III. Conclusion**

As demonstrated in OMA's Motion to Intervene and as explained above, OMA, acting on behalf of its affected members, has a direct, real, and substantial interest in the issues implicated in this proceeding and is so situated that the disposition of the proceeding may, as a practical matter, impair or impede its ability to protect those interests. Moreover, the interests represented by OMA will not be adequately represented by other parties to the proceeding, and OMA's intervention will not unduly delay or prolong the proceeding.

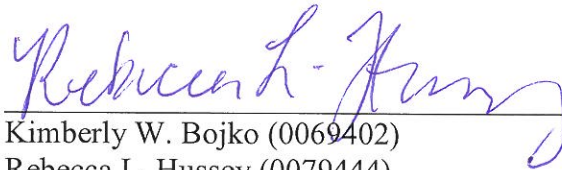
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<sup>7</sup> Memorandum Contra at 6.

<sup>8</sup> OMA Motion to Intervene at 4.

OMA satisfies the criteria set forth in Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code, and, despite Power4Schools' inaccurate assertions, should accordingly be authorized to intervene with the full powers and rights granted by the Commission to intervening parties.

Respectfully submitted,



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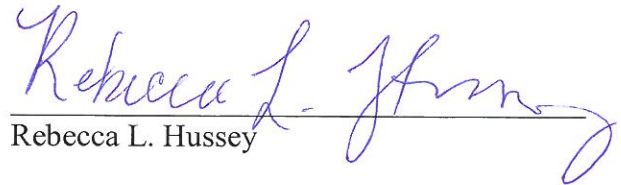
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## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on August 11, 2014.

  
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Summary: Reply to Power4Schools' Memorandum Contra OMA's Motion to Intervene  
electronically filed by Ms. Rebecca L Hussey on behalf of Ohio Manufacturers' Association