

**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.)	

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

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 by 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, and as authorized by, its members, filed motions to intervene in the matter. On August 4, 2014, Power4Schools filed a memorandum contra the motions to intervene filed by Industrial Customers and OMA (collectively, Intervenor). Further, on August 4, 2014, FES filed a memorandum contra the Industrial Customers' motion to intervene. On August 11, 2014, OMA and the Industrial Customers separately filed replies to Power4Schools' memorandum contra their motions to intervene, and the Industrial Customers also filed a reply to FES' memorandum contra their motion to intervene. On August 13, 2014, FES filed a memorandum contra (Memorandum Contra) OMA's motion to intervene, to which OMA submits this reply.

II. Argument

As asserted in its Motion to Intervene and Memorandum in Support (OMA Motion to Intervene) and as further explained herein, OMA's interests in this proceeding, which are representative of its members' interests herein, are real and substantial.¹ Further, OMA is situated such that a temporary or final decision on the matter under consideration herein may impair or impede its ability to protect its members' interests. Further, no other party can adequately represent OMA and its members' interests in this proceeding. As such, OMA has met the legal threshold for intervention in a Commission proceeding.

In support of its argument that OMA does not have a real and substantial interest in this case, FES contends that "a ruling on Power4Schools' contracts will not affect any contract

¹ OMA Motion to Intervene at 4-5.

involving OMA or its members or their right to pursue any remedies they may have.”² Contrary, to FES’ assertions, however, cases of this nature, in which the Commission is called upon to determine whether the actions of a party are lawful under its rules and regulations, generally have broad application. Without OMA’s participation in this matter, which has been duly authorized by its affected members, OMA members’ rights and interests under their agreements with FES, which are very similar to those referenced by Power4Schools in its Complaint, may be negatively impacted, without the necessary concomitant opportunity for such members’ concerns to be heard. Such a result would be unlawful and unreasonable to OMA’s members taking generation service from FES.

FES contends that OMA’s “only apparent interest in this case is the potential precedent that may be set.”³ FES’ assertion is simply untrue. While OMA may have concerns regarding the precedential nature of any decision issued by the Commission regarding its rules and regulations in this proceeding, OMA clearly and specifically indicated in the 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 month of January 2014, and will be affected by the Commission’s determination in this matter.”⁴ 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” on customers’ bills. Pursuant to OMA members’ individual Customer Supply Agreements and Fixed Price Pricing Attachments, OMA members

² Memorandum Contra at 2.

³ Id.

⁴ OMA Motion to Intervene at 4 (July 29, 2014).

have also disputed FES' right to bill and collect the RTO Expense Surcharge. The degree of correspondence between the material facts involving Power4Schools and FES and those involving OMA members and FES compelled OMA's affected members, acting through OMA, to intervene in this proceeding to protect their interests.

FES' reliance on *In re Complaint of XO Ohio*⁵ and *In re Self-Complaint of Columbus Southern Power*⁶ in support of its argument that the Commission should not grant OMA's motion to intervene is misplaced. In *In re Self-Complaint of Columbus Southern Power*, the Commission denied the motion to intervene of the Citizens Coalition because its members were not customers of AEP Ohio.⁷ Unlike the facts in that case, OMA has established that the affected customers which it represents in this proceeding are OMA members which purchase electric generation services from FES and which, like Power4Schools' participating members, have been improperly assessed RTO Expense Surcharges by FES. Thus, as distinguishable from Citizens Coalition in *In re Self-Complaint of Columbus Southern Power*, OMA has a real and substantial interest in this proceeding.

Further, *In re Complaint of XO Ohio* supports OMA's arguments, rather than those of FES, regarding OMA's motion to intervene in this proceeding. In *In re Complaint of XO Ohio*, the Commission granted the motions to intervene of two prospective intervenors who were affected by the ordinance under consideration in the case in largely the same manner as the complainant, holding that the prospective intervenors had a real and substantial interest in the proceedings.⁸

⁵ See *In re Complaint of XO Ohio*, Case No. 03-870-AU-PWC, Entry (May 14, 2003).

⁶ See *In re Self-Complaint of Columbus Southern Power Company*, Case No. 06-222-EL-SLF, Entry (March 21, 2007).

⁷ *Id.* at 3

⁸ See *In re Complaint of XO Ohio*, *supra*, Entry at 14.

Based upon the real, significant interests OMA and its affected members have in the instant proceeding, and the likelihood that any disposition of this proceeding will impair or impede OMA's ability to protect its members interests, the Commission should grant OMA's Motion to Intervene in this proceeding.

FES additionally incorrectly argues in its Memorandum Contra that denying intervention to OMA will not deprive OMA or its members of a legal remedy, in that they may pursue any alleged claim through an individual complaint.⁹ In support of this argument, FES states that "a complaint, not a motion to intervene, is the proper pleading to submit a dispute for Commission resolution."¹⁰ Although OMA is unsure about exactly what is meant by the latter statement, it construes FES' position to be that the Commission may permissibly deny OMA's motion to intervene based on the rationale that OMA members may file their own complaints. FES' position is incorrect and unreasonable. The Commission's rule on intervention directs, in pertinent part, as follows:

Upon timely motion, any person **shall** be permitted to intervene in a proceeding upon a showing that . . . [t]he person has a real and substantial interest in the proceeding . . . and is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.¹¹

Further, in ruling upon applications to intervene, the Commission "shall consider" the nature and extent of the prospective intervenor's interest, the legal position advanced by the prospective intervenor and its probable relation to the merits of the case, whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings, and whether the prospective intervenor will significantly contribute to full development and equitable resolution

⁹ Memorandum Contra at 4.

¹⁰ Id.

¹¹ Rule 4901-1-11, Ohio Administrative Code (emphasis added).

of the factual issues.¹² To the extent that the Commission finds that a person has established or demonstrated the above-listed items, it must, according to statute and its regulations, grant that prospective intervenor's motion to intervene. This is true without regard to whether the prospective intervenor may or may not, in its own right, file a complaint with the Commission.

FES also contends that "if any of OMA's members wish to file a complaint, each must individually file its own complaint, and each in its own docket."¹³ OMA respectfully submits that this contention, and the authority to which FES cites in support of its contention,¹⁴ have no application to the matter under consideration. Despite FES' attempts to shift the Commission's attention away from the standard for intervention in the instant case and toward the procedure that it believes should be followed, i.e., requiring parties to file individual complaints in separate dockets, the sole matter for the Commission's consideration in connection with these pleadings is whether OMA has met the requirements to intervene in this case.

As OMA has previously established, its interests in this proceeding are real and substantial, and the disposition of the proceeding will likely, as a practical matter, impair or impede OMA's ability, on behalf of its affected members, to protect the interests at issue in this case. Further, OMA's legal position, advanced on behalf of its members, relates directly to the merits of the case, and the introduction and inclusion of its position will contribute to the full development and equitable resolution of the factual issues under consideration in the case. Further, OMA's intervention is timely, and will not unduly prolong or delay the proceeding. Because it has established those items necessary to permit its intervention under statute and Commission regulations, the Commission should grant OMA's Motion to Intervene.

¹² See Section 4903.221(B), Revised Code.

¹³ Memorandum Contra at 6.

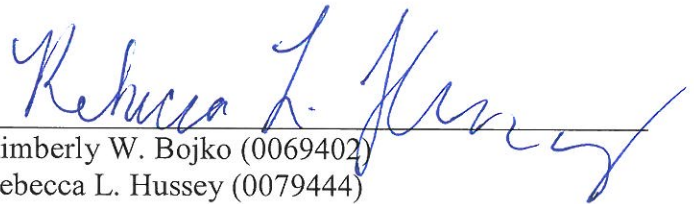
¹⁴ See *In re Complaint of S.G. Foods, Inc.*, Case No. 04-28-EL-CSS, Entry (March 7, 2006).

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.

OMA satisfies the criteria set forth in Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code, and, despite FES' inaccurate characterizations of its interests, OMA should accordingly be authorized to intervene in this proceeding on behalf of its affected members with the full powers and rights granted by the Commission to intervening parties.

Respectfully submitted,

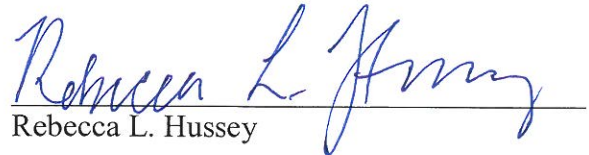


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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on August 20, 2014.


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