

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application Seeking)	
Approval of Ohio Power Company's)	Case No. 14-1693-EL-RDR
Proposal To Enter Into An Affiliate Power)	
Purchase Agreement For Inclusion In The)	
Power Purchase Agreement Rider)	

In the Matter of the Application of Ohio)	
Power Company for Approval of Certain)	Case No. 14-1694-EL-AAM
Accounting Authority)	

**MOTION TO INTERVENE
OF FIRSTENERGY SOLUTIONS CORP.**

Pursuant to Ohio Revised Code § 4903.221 and O.A.C. 4901-1-11, FirstEnergy Solutions Corp. ("FES") moves to intervene in these proceedings. FES has a number of real and substantial interests in these proceedings and its interests, which may be prejudiced by the results of these proceedings, are not adequately represented by existing parties. Thus, as set forth more fully in the attached memorandum in support, FES respectfully requests that the Commission grant this timely request to intervene.

Respectfully submitted,

/s/ Mark A. Hayden

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**MEMORANDUM IN SUPPORT OF THE MOTION TO INTERVENE
OF FIRSTENERGY SOLUTIONS CORP.**

I. Introduction

In the Application Seeking Approval of Ohio Power Company's Proposal To Enter Into An Affiliate Power Purchase Agreement For Inclusion In The Power Purchase Agreement Rider (the "Application"), the Ohio Power Company ("AEP Ohio") seeks to expand its previously proposed PPA rider currently pending in AEP Ohio's ESP III proceeding.¹ The manner in which the proposed power purchase agreement ("PPA") is implemented could have a significant effect on Competitive Retail Electric Service ("CRES") providers such as FirstEnergy Solutions Corp. ("FES"). These changes are particularly important to FES as a participant in the AEP Ohio CBP process, a CRES provider in AEP Ohio's service territory, and a participant in Ohio's wholesale market. FES has a real and substantial interest in this proceeding, and the Commission's disposition of this proceeding may impair or impede FES's ability to protect that interest. Thus, FES respectfully requests that the Commission grant its motion to intervene in this proceeding.

¹ Case Nos. 13-2385-EL-SSO *et al.*

II. Legal Standard

R.C. § 4903.221 provides that any “person who may be adversely affected by a public utilities commission proceeding” may intervene in the proceeding. The Commission’s own rules reinforce the right to intervene:

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 the person 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.

O.A.C. 4901-1-11(A) (emphasis added). “The regulation’s text is very similar to Civ. R. 24 – the rule governing intervention in civil cases in Ohio – which is generally liberally construed in favor of intervention.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 387 (2006) (internal quotations omitted). In considering a motion to intervene, the Commission’s rule directs that the Commission should consider: the nature and extent of the intervenor’s interest; the legal position advanced by the intervenor and its probable relation to the merits of the case; whether intervention will unduly prolong or delay the proceedings; whether the intervenor will significantly contribute to full development and equitable resolution of the factual issues; and the extent to which the intervenor’s interest is represented by existing parties. *See* O.A.C. 4901-1-11(B)(1)-(5); *see also* R.C. § 4903.221(B)(1)-(4). FES’s motion to intervene satisfies each of these factors.

III. Argument

A. The Nature And Extent Of FES’s Interest

FES is an owner and operator of electric generating facilities located in Ohio and elsewhere. FES offers a wide range of energy and energy-related products and services, including the generation and sale of electricity and energy planning and procurement, to

wholesale and retail customers across Ohio both directly and through governmental aggregation programs. FES currently provides competitive services to customers in AEP Ohio's service territories, and has bid into AEP Ohio's CBP. The structure and pricing of AEP Ohio's proposed PPA with AEP Generation Resources, Inc. could directly impact FES's ability to provide those competitive services. FES supports the Application's proposed structure which would keep the PPA separate from both the CBP and retail markets. As such, FES has a substantial interest in the outcome of this proceeding and in ensuring that the PPA is established appropriately. That interest cannot be represented by any other party to this proceeding, as no other party to this proceeding represents FES's interest as a participant in the AEP Ohio CBP process, a CRES provider in AEP Ohio's service territory, and a participant in Ohio's wholesale market.

B. The Legal Position Asserted By FES

FES supports AEP Ohio's proposal to provide a cost-based hedge to customers and to provide significant economic benefits to the state. However, the specific details regarding how the PPA is implemented may have a significant impact on FES as a CRES provider operating in AEP Ohio's territory and as a participant in Ohio's wholesale market. As such, FES seeks to intervene to ensure that AEP Ohio's proposed PPA is implemented in an orderly manner consistent with all relevant legal principles.

C. FES's Intervention Will Not Unduly Prolong Or Delay The Proceedings

The Application was filed on October 3, 2014, and the Commission has not yet established a procedural schedule or a hearing date. As a result, FES's Motion to Intervene is timely and will not prejudice any existing parties or unduly prolong or delay the proceedings.²

²See O.A.C. 4901:1-11(E) (providing that a motion to intervene "will not be considered timely if it is filed later than five days prior to the scheduled date of hearing or any specific deadline established by order of the commission for purposes of a particular proceeding").

D. FES Will Contribute To The Full Development Of Factual Issues And FES's Interests Are Not Already Represented By Existing Parties.

FES is uniquely situated to contribute to the full development of factual issues in this case as one of the largest CRES and wholesale providers in the state. FES has substantial experience promoting fair and open competitive markets through participation in Commission proceedings, which experience may benefit the Commission's review of AEP Ohio's Application.³ FES's participation will significantly contribute to the full development and resolution of the issues raised by AEP Ohio's proposal because FES has significant experience in the wholesale marketplace.

FES's interests are not already represented by existing parties, as no other party currently involved in this proceeding currently represents the interests of FES in serving AEP Ohio's customers on a wholesale basis.

³ See, e.g., *In the Matter of the Application of The Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to § 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO et al., Mot. To Intervene of FES, dated February 14, 2011; *In the Matter of the Application of Ohio Power Company to Establish a Competitive Bidding Process for Procurement of Energy to Support its Standard Service Offer*; Case No. 12-3254-EL-UNC, Mot. To Intervene of FES, dated January 14, 2013; *In re Application of Duke Energy Ohio for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply*, Case No. 10-2586-EL-SSO, Mot. to Intervene of FES, filed Nov. 19, 2010; *In re Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply*, Case No. 09-906-EL-SSO, Mot. to Intervene of FES, dated Nov. 25, 2009.

IV. Conclusion

WHEREFORE, FES respectfully requests that the Commission grant this Motion to Intervene and allow FES to be made a party of record to this proceeding.

Respectfully submitted,

/s/ Mark A. Hayden

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Intervene of FirstEnergy Solutions Corp.* was served this 10th day of October, 2014, via e-mail upon the parties below.

/s/ N. Trevor Alexander
One of the Attorneys for FirstEnergy Solutions Corp.

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Summary: Motion to Intervene electronically filed by Mr. Nathaniel Trevor Alexander on behalf of FirstEnergy Solutions Corp.