

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**PUCO**

In the Matter of the Application of Ohio Edison	)	
Company, The Cleveland Electric Illuminating	)	
Company, and The Toledo Edison Company	)	
for Approval of a Competitive Bidding Process	)	Case No. 07-796-EL-ATA
for Standard Service Offer Electric Generation	)	Case No. 07-797-EL-AAM
Supply, Accounting Modifications Associated	)	
with Reconciliation Mechanism and Phase In,	)	
and Tariffs for Generation Service.	)	

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**MEMORANDUM CONTRA MOTION TO INTERVENE  
OF COLUMBUS SOUTHERN POWER COMPANY AND OHIO POWER  
COMPANY  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION AND PROCEDURAL HISTORY**

Pursuant to Ohio Adm. Code 4901-1-12(B)(1), the Office of the Ohio Consumers' Counsel ("OCC") files this Memorandum Contra to the Columbus Southern Power Company's ("CSP's") and Ohio Power Company's ("OP's") (together "AEP") Motion to Intervene. OCC represents residential consumers in this case involving generation prices in the service areas of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively "FirstEnergy" or the "Company")

The background for this filing is as follows. FirstEnergy filed an application for approval of a competitive bidding process ("CBP") for standard service offer electric generation supply, accounting modifications associated with a reconciliation mechanism and phase in, and tariffs for generation service on July 10, 2007. FirstEnergy described the purpose of this filing as a request to the Commission to:

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Approve a competitive bidding process to establish a market-based standard service generation offer, beginning January 1, 2009, for retail customers who do not select alternative suppliers.<sup>1</sup>

Several parties moved to intervene, including customer groups and competitive suppliers. The Commission held a prehearing conference on August 16th and established a procedural schedule by Entry on the same date. AEP filed its motion to intervene on August 16, 2007.

The issues in these cases involve the manner in which FirstEnergy will provide generation service to customers, including approximately 1.9 million residential customers, in northern Ohio. These issues in these cases do not include the manner in which AEP will provide generation service to its customers elsewhere in Ohio.

## **II. LEGAL STANDARDS**

Pursuant to the intervention standard in R.C. 4903.221, parties who may be “adversely affected” by this proceeding may intervene. And under Ohio Adm. Code 4901-1-11(A)(2), parties who have a real and substantial interest are permitted to intervene in PUCO cases.

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 proceedings; and

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<sup>1</sup> Application at 2.

- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

In interpreting these criteria the Commission has:

Consistently denied intervention requests when the person's interest is that legal precedent may be established which may affect that person's interest in a subsequent case. To grant intervention on this basis would render the Commission's rule on intervention meaningless and allow almost any person intervention in any case based on the proposition that the precedent established may affect them in some future case.<sup>2</sup>

### III. ARGUMENT

#### A. The Commission Should Deny AEP's Motion to Intervene in this Case Where Its Primary Interest Is to Affect the Precedent That May Be Set By FirstEnergy's Application.

AEP states that its interest in this case is that the Commission consider a single CBP for use by all EDUs who pursue an auction process in the post-2008 time period.<sup>3</sup> But AEP's other comments indicate that AEP's real interest is the precedent that the Commission will set in this case. For example, AEP states:

AEP Ohio supports FirstEnergy's CBP design for use under the current statutory framework for market-based rates for electric generation service. By this intervention, AEP Ohio proposes that the Commission adopt this CBP design for use by Ohio's electric distribution utilities, such as AEP Ohio, who based on current law will be implementing market-based rates at the conclusion of their current rate stabilization plans.<sup>4</sup>

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<sup>2</sup> *In the Matter of the Application of FirstEnergy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company for Approval of Their Transition Revenues*, Case No. 99-1212-EL-ETP Entry (March 23, 2000) at 2. Citing to *In the Matter of the Application of MFS Intelenet of Ohio*, Case No. 94-2019-TP-ACE (May 4, 1995); and *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend filed Tariffs to Increase the Rates and Charges for Case Service*, Case No. 94-987-GA-AIR (August 4, 1994).

<sup>3</sup> Motion to Intervene of Columbus Southern Power Company and Ohio Power Company at 4.

<sup>4</sup> *Id.* at 2.

Additionally, AEP states:

AEP Ohio presumes that, at a minimum, the substantive aspects of the CBP adopted by the Commission in this proceeding would be used as a template for other EDUs and that the Commission would not want to start anew when developing a CBP for each EDU.

As noted above, the Commission does not grant intervention in PUCO cases to allow parties to affect precedent that may be set in a case in which the party has no other interest. To the extent that AEP is concerned that this case will affect the competitive bid process that it may propose in its own application, AEP cannot be granted intervention. And to the extent that AEP agrees with FirstEnergy's application, AEP should not be concerned that this case will establish precedent that AEP will dislike. FirstEnergy has the same incentive to defend its application as does AEP.

Ultimately, the Commission in this case can consider only FirstEnergy's bid process in FirstEnergy's application, as it relates to 1.9 million residential consumers in FirstEnergy's service area. The Commission cannot approve AEP's competitive bid process as part of FirstEnergy's application. Therefore, if AEP has the model of the competitive bid process it would like to propose, AEP can file its own application.

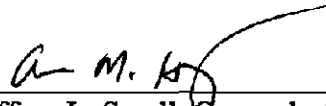
In fact, AEP suggests in its motion to intervene that it will file its own CBP application in order to allow the Commission to consider a single CBP for use by all EDUs. R.C. 4928.14 and the Commission's Market-based Standard Service Offer and Competitive Bidding Process for Electric Utilities, Ohio Adm. Code 4901:1-35 provides for such an application.

#### **IV. CONCLUSION**

The Commission should deny AEP's motion to intervene on the basis that AEP's interest in the case is merely based on affecting precedent. Instead, AEP can consider filing its own application under R.C. 4928.14 to propose what it states to be its interest in a common competitive bid for all of Ohio's electric utilities.

Respectfully submitted,


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## **CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing pleading was served via electronic and/or ordinary mail this 31st day of August, 2007.

  
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