

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Application of Ohio)	Case Nos. 07-551-EL-AIR
Edison Company, The Cleveland Electric)	07-552-EL-ATA
Illuminating Company and The Toledo)	07-553-EL-AAM
Edison Company for Authority to)	07-554-EL-UNC
Increase Rates for Distribution Service,)	
Modify Certain Accounting Practices and)	
For Tariff Approvals)	

**INTEGRYS ENERGY SERVICES, INC.'S
MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT**

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I. MOTION TO INTERVENE

Now comes Intergy Energy Services, Inc. ("Integrys"), who, pursuant to Section 4903.221, Revised Code and Rule 4901-1-11 of the Ohio Administrative Code, moves for intervention in the above styled proceeding as a full party of record. The reasons supporting the intervention are contained in the accompanying Memorandum in Support.

In accordance with the Attorney Examiner's Entry of December 21, 2007 (paragraph 8), this intervention request is submitted prior to the January 15, 2008 deadline, and Integrys accepts the record as it exists today.

II. MEMORANDUM IN SUPPORT

When the application in the matter at bar was filed, it contained a request for authorization to increase distribution rates to pay for certain fuel deferrals in accordance with the

Commission's acceptance of the Rate Certainty plan in Case Nos. 05-704-EL-ATA, 05-1125-EL-ATA, 05-1126-EL-AAM, and 05-1127-EL-UNC (the "RCP Case"). Integrys appealed the authorization for fuel deferrals as authorized in the RCP Case to the Ohio Supreme Court. After the application was filed, the Ohio Supreme Court in *Elyria Foundry v. Public Utilities Commission* 114 Ohio St. 3d 305, 2007 – Ohio 4164 reversed the Commission order in part and held that the fuel deferrals authorized in the RCP Case violated Section 4928.02(G), Revised Code. The Staff in its Staff Report noted the *Elyria* decision, and accordingly, excluded the fuel deferrals from the distribution rates. On January 3, 2008 FirstEnergy filed Objections to the Staff Report, and while not disputing the *Elyria* decision, indicated that the Staff had an obligation to devise a process to make the utility whole for its legitimate fuel expenditures. Integrys' interest in the matter at bar is *inter alia* in how the fuel deferrals are addressed.

For purposes of considering requests for leave to intervene in a Commission proceeding, OAC 4901-1-11(A) provides that:

Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that: ... (2) The 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.

Further, RC § 4903.221(B) provides that the Commission, in ruling upon applications to intervene in its proceedings, shall consider the following criteria:

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

OAC 4901-1-11(B) also provides the following factors in considering requests to intervene:

(1) The nature of the person's interest; (2) The extent to which the person's interest is represented by existing parties; (3) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding; and (4) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice any existing party.

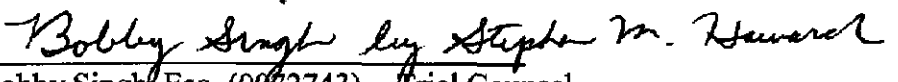
Integrus is a certificated competitive retail electric service ("CRES") provider. Whether the fuel deferrals are bypassable for customers who purchase their own energy from a CRES is a significant factor in Integrus' ability to provide service in Ohio. Integrus is so situated that the disposition of the fuel deferral issue in this proceeding without Integrus' participation will impair and impede its ability to protect its interests, because others participating in this proceeding do not represent Integrus' interests. Inasmuch as others participating in these proceedings cannot adequately protect Integrus' interests, it would be inappropriate to determine this proceeding without Integrus' participation. Integrus' perspective as a CRES supplier and the appellant in the *Elyria* case will contribute to the full, equitable, and expeditious resolution of this proceeding.

The Attorney Examiner in her Entry of December 21, 2007 set an intervention deadline of January 15, 2008 which is prior to this filing. Further, the date for the hearing itself in the matter at bar has not been established and the first pre trial conference is set for three weeks from today. Thus, Integrus' intervention is timely and will not unduly delay the proceeding, or unjustly prejudice the interests of any existing party.

III. CONCLUSION

For the reasons noted above, this proceeding will raise issues that will have direct and substantial impacts on Integrus' interests. Thus, Integrus respectfully requests the Commission to grant Integrus' request to intervene in the above-captioned docket.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following parties of record or as a courtesy, via U.S. Mail postage prepaid, express mail, hand delivery, or electronic transmission, on January 7, 2008.


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