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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

2009 JUL 15 AM 10:41

In the Matter of the Application of Ohio )  
Edison Company, The Cleveland Electric )  
Illuminating Company and The Toledo )  
Edison Company for Approval of an )  
Experimental Critical Peak Pricing Rider, )  
a Revised Generation Service Rider )  
Which Includes a Time-of-Day Option, )  
and an Experimental Real Time Pricing )  
Rider. )

**PUCO**

Case No. 09-541-EL-ATA

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**MOTION TO INTERVENE AND COMMENTS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene<sup>1</sup> in this case in which compliance with provisions in the Stipulation and Recommendation ("Stipulation") in Case Nos. 08-935-EL-SSO, et al., and related matters are at issue.<sup>2</sup> OCC files on behalf of all the approximately 1.9 million residential utility consumers of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy" or "Company"). The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion to Intervene ("Motion") are further set forth in the attached Memorandum in Support.

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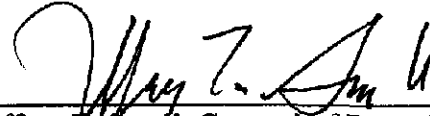
<sup>1</sup> See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

<sup>2</sup> Application, Exhibit C-1 at 1.

**This is to certify that the images appearing are an  
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Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Jeffrey L. Small", written over a horizontal line.

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

This case involves the review of the reasonableness of FirstEnergy's proposals regarding voluntary programs that involve variable pricing for generation service that are called for in the Stipulation approved by the Commission.<sup>3</sup> OCC has authority under law to represent the interests of all the approximately 1.9 million residential utility customers of FirstEnergy, pursuant to R.C. Chapter 4911.

**II. INTERVENTION**

R.C. 4903.221 provides, in part, that any person "who may be adversely affected" by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio's residential consumers may be "adversely affected" by this case, especially if the consumers were unrepresented in a proceeding that involves plans to price generation services (along with associated terms and conditions for such service) that could have a significant impact on individual residential customers as well as to the future of variable

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<sup>3</sup> Id.

price programs for additional residential customers. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

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

First, the nature and extent of OCC's interest is representing the residential consumers of FirstEnergy in order to help assure that the generation services are provided at reasonable prices and upon reasonable terms and conditions. This interest is different than that of any other party, and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for consumers will include advancing the position that programs undertaken by the Company should provide meaningful choices for residential customers and the programs will only provide useful information under such circumstances. This position is further elaborated upon in comments included with the instant filing. OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of the terms under which public utilities provide their services.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC was significantly involved in the case that resulted in execution of the Stipulation (including discussion and execution of the Stipulation itself). From this experience, the OCC has information and will develop additional information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a very real and substantial interest in this case where potential service to residential customers is at issue.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the "extent to which the person's interest is represented by existing parties." While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio's

residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed OCC's right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC's intervention and that OCC should have been granted intervention.<sup>4</sup>

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential consumers, the Commission should grant OCC's Motion to Intervene.

### **III. COMMENTS UPON THE APPLICATION**

#### **1. Metering**

In its Experimental Critical Peak Pricing Rider ("Rider CPP"), FirstEnergy would require residential customers to pay for an interval meter at a price in excess of \$500.<sup>5</sup> Metering should be less costly, especially in light of progress towards implementing smart grid technologies in areas served by FirstEnergy.<sup>6</sup> Even if a residential customer falls outside the geographic area where FirstEnergy plans its advanced metering infrastructure AMI/Smart Grid metering pilot program,<sup>7</sup> the residential customer should not be charged

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<sup>4</sup> See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

<sup>5</sup> See Tariff Sheet 75.

<sup>6</sup> See, e.g., *In re FirstEnergy ESP Case*, Case No. 08-935-EL-SSO, Request for Staff Review of Draft Stimulus Application (July 1, 2009).

<sup>7</sup> Such a customer residing in the pilot program geography should also avoid the expensive \$37.50 monthly Program Administrative Charge.

more than the expected cost of the new meters once they are ordered in large numbers.<sup>8</sup>

Any excess above this amount should be charged as part of the Advanced metering Infrastructure/Modern Grid Rider that has been approved by the Commission.<sup>9</sup>

The premature obsolescence of meters for the critical peak pricing program should be avoided. Therefore, any meters installed should be, to the extent possible, consistent with metering protocols of any Company-planned AMI/Smart Grid pilot.<sup>10</sup>

## **2. Rate Design**

### **(a) Rider CPP Should Contain Different Prices for the Shoulder and Peak Periods.**

FirstEnergy has incorporated a shoulder period in both its Rider CPP and its Time of Day Option.<sup>11</sup> The addition of a shoulder period further stratifies the costing period and affords customers more flexibility in shifting their consumption over the different periods of the day. This additional flexibility should make the program more attractive to customers than traditional two period rate designs.

Unlike the Time of Day Option, however, both the shoulder and peak period in the Rider CPP rates are priced the same for the summer season. The Rider CPP rates should be modified to include a lower priced summer shoulder period relative to the summer peak period.

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<sup>8</sup> Such a residential customer residing in the pilot program geography should also avoid the expensive \$37.50 monthly Program Administrative Charge. Furthermore, the reduced cost for the meter should be charged to the residential customer in monthly installments covering no less than twelve months.

<sup>9</sup> See, e.g., Ohio Edison Company, P.U.C.O. Tariff No. 11, Original Sheet 106 (approved in Case No. 07-551-EL-AIR).

<sup>10</sup> See, e.g., *In re FirstEnergy ESP Case*, Case Nos., 08-935-EL-SSO, FirstEnergy Request for Staff Review of Draft Stimulus Application (July 1, 2009).

<sup>11</sup> See, e.g., Ohio Edison Company, P.U.C.O. Tariff No. 11, Original Sheet 113 (June 29, 2009). The proposed rate for Summer Midday Peak and Shoulder Peak are \$.082417/kilowatt-hour.

**(b) The Critical Peak Pricing Rate Design Should be Modified.**

FirstEnergy has recognized seasonality differences in electric use profiles between summer and winter, which will assist in properly mitigating the seasonal peak load demands that occur. However, the pricing structure between the three intra-seasonal pricing levels are inconsistently skewed and are not proportionately representative of peak period pricing premiums in the proposed Rider CPP. FirstEnergy should be required to provide justification for the determination of the proposed off-peak rates. Further, these rates should be subject to further evaluation.

The effectiveness of any variable pricing structure is based on the incentive mechanisms that will induce consumers to shift their electric use during peak demand periods in comparison to the alternative Rider Gen. There are several critical peak pricing programs in the United States that have documented consumer response to various pricing designs.<sup>12</sup> FirstEnergy should make use of information from these existing programs to determine an appropriate critical peak pricing structure.

#### **IV. CONCLUSION**

For the above-stated reasons, OCC's Motion to Intervene should be granted. The Commission should also correct matters contained in the Company's Application as discussed in the above-stated comments.

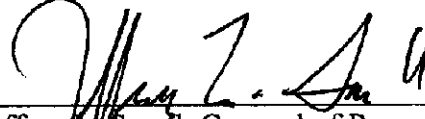
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<sup>12</sup> Faruqui and Sanem, *Household Response to Dynamic Pricing of Electricity – A Survey of the Experimental Evidence*, 2009, available at: <http://ssrn.com/abstract=1134132>.



Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

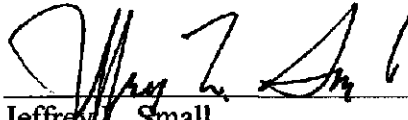
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below by regular U.S. Mail, postage prepaid, on this 15<sup>th</sup> day of July 2009.

  
\_\_\_\_\_  
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