

FAX

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Energy Efficiency and
Peak Demand Reduction Program Portfolio
of Ohio Edison Company, The Cleveland
Electric Illuminating Company, and
The Toledo Edison Company.

Case No. 09-580-EL-EEC
Case No. 09-581-EL-EEC
Case No. 09-582-EL-EEC

PUCO

2009 NOV -6 AM 11:45

RECEIVED-DOCKETING DIV

**REPLY BRIEF OF THE CITIZENS COALITION IN SUPPORT OF MOTION TO
INTERVENE**

The Neighborhood Environmental Coalition, The Empowerment Center of
Greater Cleveland, United Clevelanders Against Poverty, Cleveland Housing
Network and The Consumers for Fair Utility Rates (collectively "Citizens Coalition")
have moved to intervene in these proceedings which in actuality are the
continuation of prior proceedings involving FirstEnergy, its operating companies,
(collectively "Companies") and other parties.

The goal of the Citizens Coalition in seeking to intervene in this case is to
offer its help, advice, and recommendations for the CFL Program. This intention is
demonstrated in the "Comments" which the Citizens Coalition filed on October 27,
2009, before the scheduled oral arguments in this case. The Coalition seeks to help
the Companies and the other intervening parties in implementing an effective,
prompt, and beneficial CFL program. Since participating in the Grand "Two-Part"
Stipulation earlier this year with the Companies and many other parties, the
Citizens Coalition has sought to assist in implementation of the various sections of
the Grand Stipulation through their activities in the community, through assisting in

implementing the Companies' Fuel Fund program, and through working with the various collaborative FirstEnergy groups.

The Companies raise a number of contentions opposing the Citizen Coalition intervention which rely upon various sections of O.A.C. Sections 4901-1-11. It is the position of the Citizens Coalition that its intervention is appropriate based on the standards set out by the Administrative Code and case law.

I. The goal of the Citizens Coalition is to help the Companies and the other parties involved in this Case and is therefore somewhat surprised that the Companies have undertaken this antagonistic approach of opposing the intervention of the Citizens Coalition.

No one from the Companies ever called the Citizens Coalition or inquired about the goals of their intervention. No one has responded to the hopefully helpful Comments filed by the Citizens Coalition.

Given that the supporters of the Citizens Coalition and the low-income families are one of the main groups that will benefit from a well-administered CFL that communicates and coordinates with all customers, it would seem that the Companies would welcome the Citizens Coalition. Even at this late date, it is still possible for the Companies to implement a CFL program that will be mutually advantageous to the Companies and their customers.

II. The Companies very properly express a concern whether the Citizens Coalition's intervention "will unduly prolong or delay the proceedings." The Citizens Coalition has no intention of provoking any delay and in fact want to speed up the proceeding to help the customers of the Companies.

The Citizens Coalition intervention will not "unduly prolong or delay the proceedings," O.A.C. Section 4901-1-11-(3).e First, the Coalition states that it has no intention to prolong or delay this proceeding. Secondly, the Coalition has demonstrated this intention concretely in this proceeding. The PUCO had set a date of October 28, 2009, for the hearing. Certain parties had been designated to speak in this highly unusual proceeding before the entire Commission. The Citizens Coalition made no attempt to change the October 28th schedule, nor did the Coalition demand any speaking time. There has been a new order by the PUCO which also urges the Companies and all intervening parties to work together on the CFL program. The Citizens Coalition intends to abide fully by the new PUCO order, and hopes that the Company will welcome community groups such as the Citizens Coalition.

Thirdly, it would be folly for the Citizens Coalition to delay the implementation of a program which promises to help the Coalitions' supporters and all low-income families. The major goal of the Coalition is to help lower the monthly utility bills for low-income families and thus help them conserve their meager resources while also retaining vitally-needed utility services. The CFL promises to help these families. The families will reduce their electricity usage by using these bulbs rather than the more expensive "ordinary" bulbs, which thus lowers their electric bills while these families still obtain necessary lighting.

For these three reasons, the intervention by the Citizens Coalition will not delay these proceedings.

III. The Companies pose the general concern of whether the Citizens Coalition intervention "will significantly contribute to the full development and equitable resolution of the factual issues." O.A.C. Section 4901-1-11-(3). The Coalition already has filed Comments showing how it can contribute in this proceeding.

This may be the most important element in evaluating any request for intervention—whether the potential intervener can contribute to the overall resolution of the facts and the case. The Citizens Coalition and its supporters are uniquely positioned to assist in efficient resolution of this case.

First, these community groups and their counsel have been involved in programs similar to the CFL program in the past. For example, the Empowerment Center and Cleveland Housing Network right now are assisting the customers of the Company operating companies in distributing the moneys from the Companies' fuel funds. This involves the need for extensive coordination and communication between the operating companies, the helping agencies, and the Companies' customers. In the past, Coalition supporters were involved in the DSM cooperative effort involving the Centerior Company in the 1990's and in the cooperative programs of the 1980's with the electric company. In fact, this present counsel was the Chair of the Centerior DSM Board, which coordinated a number of energy efficiency programs to help residential and commercial customers, including a bulb distribution program.

Second, the Coalition members have already submitted a number of Comments which can assist in implementing the bulb program. Some of these comments do concern the working of the collaborative which is mentioned several

times in the Companies filing opposing the Coalition intervention. It is true that the Citizens Coalition and its legal representative did participate in some of the "collaborative" meetings. Unfortunately, these meeting were not really a "collaborative" effort. Collaboration calls for a sharing of ideas, recommendations, and mutual responsibilities. Most collaborative meetings seemed to be simply company representatives with one power point presentation after another. Counsel for the Citizens Coalition did make several suggestions aimed both at the price of the bulbs and methods of distribution. These do not seem to have gone anywhere.

It is also necessary in any collaborative that Roberts' Rules of Order should be followed to the extent these are pertinent. Certainly there should be motions at the end of any discussion followed by actual recorded voting. The goal is, of course, consensus. But voting is necessary so that everyone realizes their involvement and responsibility for the group's actions. This was never done. So besides a better structured CFL program , there is also the need for a properly structured collaborative that can discuss programs, gather recommendations, and call for participatory voting.

Third, the Coalition member groups may be particular situated to help in the distribution of bulbs. Of course, it is not just the actual dissemination of bulb packages that is important, but the bulbs must be properly inserted and then used. These community groups may be able to assist in this. For example, the Empowerment Center (which is definitely not a party in any way yet to this proceeding) helps many of the Companies' customers through the Fuel Fund

program. At the same time that a family is being helped to "get back on track" as a paying customer, who not use this as an opportunity for both educating the customer on energy efficiency and distributing the light bulbs. On later follow-up by the Empowerment Center about the customer's situation, here would be an opportunity to insure the customer had actually used the bulbs and to ask if the customer had noticed any difference in their bills.

In conclusion, in terms of relevant experiences and knowledge, involvement in past collaborative efforts with utility companies, and possessing resources and contacts that could be helpful for the CFL program, the Citizens Coalition does satisfy paragraph (4) of O.A.C. section 4901-1-11.

IV. The Citizens Coalition's Motion for Intervention was timely for the purposes of intervening in the rehearing of this case.

As the Companies point out in their brief in opposition, O.A.C. 4901-1-11(E) requires that parties move to intervene at least five days before "the scheduled date of hearing or any specific deadline established by order of the commission for the purposes of a particular proceeding." The Citizens Coalition filed its motion for intervention on October 19, 2009, seeking intervention in the rehearing of this case. Rehearing was requested in this case by the Ohio Consumers' Counsel and granted by the Commission in its November 4, 2009 entry on rehearing. The Citizens Coalition filed its motion to intervene 16 days before rehearing was even granted in this case. Undoubtedly this motion was timely for the purposes of permitting the Citizens Coalition to intervene in the rehearing.

V. The Citizens Coalition's interest in this proceeding is unique due to its exclusive representation of low-income customers of the Companies

The Citizens Coalition has been representing the interests of low-income consumers in PUCO proceedings for decades. Low-income customers have undeniably unique interests in the actions of the Commission. If they did not, programs like the Percentage of Income Payment Program and the Winter Reconnect Order would not exist. As the Companies admit in their brief in opposition, the Ohio Consumers' Counsel represents consumers from every income background and the Ohio Partners for Affordable Energy represent both low and moderate-income consumers. The Citizens Coalition would be the only party to this proceeding exclusively representing low-income customers. Due to its unique standing in this regard, the Commission should permit the Citizens Coalition to intervene.

VI. The Citizens Coalition Respectfully Requests the Companies Counsel Recommend to their Clients that the Opposition to the intervention of the Citizens Coalition be Released and That All Parties work Cooperatively on Achieving a "World Class" Bulb Distribution Program.

There are times when it is both appropriate and necessary for parties to engage in legal battles and struggles. This has been the hall mark of the SB 221 proceedings up until the signings of both parts of the Grand Stipulation. Perhaps now such legal combat should be put aside.

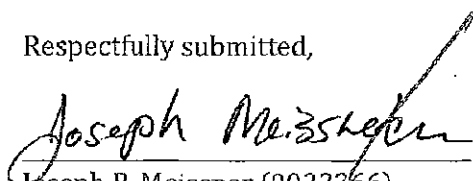
It would seem that after those signings all of the parties should try to work together on implementation of both the Grand Stipulation and SN 221's many provisions. That especially includes this CFL program. It does no one any good to

have the publicity fiasco we have recently experienced. We do not need certain radio personalities allowing discussion "about shooting people who will come to someone's house to distribute CFL bulbs."


VII. Conclusion

In conclusion, intervention of the Citizens Coalition is appropriate in this case and should be granted by the Commission. The Citizens Coalition respectfully urges the Companies' Counsel to request that their client drop opposition to the beneficial intervention involvement of the Citizens Coalition in this proceeding.

Respectfully submitted,



Joseph P. Meissner (0022366)
jpmessn@lasclev.org



Matthew D. Vincel (0084422)
mvincel@lasclev.org
Counsel for the Citizens Coalition
The Legal Aid Society of Cleveland
1223 West 6th Street
Cleveland, OH 44113
Tel: 216.687.1900, Exts. 5672, 5032
Fax: (216) 861-0704

NOTICE OF SERVICE

I hereby certify that a copy of the foregoing Motion and Memorandum were served upon the address of the parties in this PUCO proceeding listed below by ordinary first class mail, postage prepaid, on this 6th day of November 2009.

Arthur E. Korkosz
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308

Jeffrey Small
Office of the Ohio Consumers' Counsel
10 West Broad Street, Ste. 1800
Columbus, OH 43215-3485

David C. Rinebolt
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839

Duane W. Luckey
Attorney General's Office
Public Utilities Section
180 East Broad Street 9th Floor
Columbus, OH 43215

Henry W. Eckhart
50 West Broad Street #2117
Columbus, OH 43215

Samuel C. Randazzo
McNees Wallace & Nurick
21 East State Street 17th Floor
Columbus, OH 43215

Theodore S. Robinson
Citizen Power
2121 Murray Ave.
Pittsburgh, PA 15217



Matthew D. Vincel (0084422)

The Legal Aid Society of Cleveland
1223 West 6th Street
Cleveland, OH 44113
Telephone: 216.861.5210