

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	Case No. 09-1004-EL-EEC
Illuminating Company, and The Toledo)	09-1005-EL-EEC
Edison Company To Amend Their Energy)	09-1006-EL-EEC
Efficiency Benchmarks.)	

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in these cases in which the Applicants seeks a waiver of its obligations to meet the energy efficiency benchmark provisions that are part of R.C. 4928.66.¹ OCC is filing 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 "Companies" or "Applicants"). 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.

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

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Gregory J. Poulos
Gregory J. Poulos, Counsel of Record
Jeffrey L. Small
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-8574
poulos@occ.state.oh.us
small@occ.state.oh.us

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	Case No. 09-1004-EL-EEC
Illuminating Company, and The Toledo)	09-1005-EL-EEC
Edison Company To Amend Their Energy)	09-1006-EL-EEC
Efficiency Benchmarks.)	

MEMORANDUM IN SUPPORT

These cases involve the review of FirstEnergy’s request that the Commission amend its obligation to meet the 2009 energy-efficiency benchmark in accordance with R.C. 4928.66 as a result of “regulatory reasons beyond its control.”² 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.

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 these cases, especially if the consumers were unrepresented in a proceeding that involves plans to delay or waive FirstEnergy’s implementation of its energy efficiency requirements. 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 Application at 1.

- (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 energy efficiency requirements contained in R.C. 4928.66 are properly implemented. 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 comments that will be filed separately in the next two weeks and will include the position that FirstEnergy was aware of the 2009 Energy Efficiency Benchmark since July of 2008 and should have been prepared to comply with it. 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 legislative discussions revolving around S.B. 221, including its provisions regarding energy efficiency. From this experience, the OCC has information and will develop

additional information that the PUCO should consider for equitably and lawfully deciding the cases 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 these cases where the energy efficiency provisions contained in S.B. 221 are subject to early interpretation by the Commission.

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.³

³ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

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.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Gregory J. Poulos
Gregory J. Poulos, Counsel of Record
Jeffrey L. Small,
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-8574
poulos@occ.state.oh.us
small@occ.state.oh.us

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 13th day of November 2009.

/s/ Gregory J. Poulos _____
Gregory J. Poulos
Assistant Consumers' Counsel

SERVICE LIST

Duane Luckey
Assistant Attorney General
Public Utilities Commission of Ohio
180 E. Broad St., 6th Fl.
Columbus, OH 43215

Kathy J. Kolich
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308

James F. Lang
Calfee, Halter & Griswold LLP
1400 KeyBank Center
800 Superior Ave.
Cleveland, OH 44114

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

Attorney for Natural Resources Defense
Council

Attorney for Applicants, Ohio
Edison Company, The Cleveland
Electric Illuminating Company and
The Toledo Edison Company

David C. Rinebolt
Colleen C. Mooney
Ohio Partners for Affordable Energy
P.O. Box 1793
Findlay, OH 45839-1793

Will Reisinger
Nolan Moser
Trent Dougherty
The Ohio Environmental Council
1207 Grandview Ave., Ste. 201
Columbus, OH 43212-3449

Todd M. Williams
P.O. Box 6885
Toledo, OH 43612

Attorney for the Ohio Environmental
Council

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/13/2009 12:14:12 PM

in

Case No(s). 09-1004-EL-EEC, 09-1005-EL-EEC, 09-1006-EL-EEC

Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Poulos, Gregory J.