

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, the Cleveland Electric)	
Illuminating Company, and the Toledo)	Case Nos. 09-1947-EL-POR
Edison Company for Approval of Their)	09-1948-EL-POR
Energy Efficiency and Peak Demand)	09-1949-EL-POR
Reduction Program Portfolio Plans for)	
2010 through 2012 and Associated Cost)	
Recovery Mechanisms.)	
)	
In the Matter of the Application of Ohio)	
Edison Company, the Cleveland Electric)	Case Nos. 09-1942-EL-EEC
Illuminating Company, and the Toledo)	09-1943-EL-EEC
Edison Company for Approval of Their)	09-1944-EL-EEC
Initial Benchmark Reports.)	

**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 where the proposed program portfolio is important to consumers who will be best served by the implementation of cost-effective energy efficiency and peak demand reduction programs, including programs that rely on residential consumer participation.¹ Approved programs will be used to satisfy statutory benchmarks.

OCC files this Motion to Intervene ("Motion") on behalf of all the approximately 2.1 million residential utility consumers of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy" or

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

“Companies”).² The reasons the Public Utilities Commission of Ohio (“Commission” or “PUCO”) should grant OCC’s Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS’ COUNSEL

/s/ Christopher J. Allwein
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² FirstEnergy also filed its reports in Case Nos. 09-580-EL-EEC, 09-581-EL-EEC and 09-582-EL-EEC, cases in which OCC is already a party.

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MEMORANDUM IN SUPPORT

These cases involve FirstEnergy’s Energy Efficiency and Peak Demand Reduction Program Portfolio Plan and its Initial Benchmark Reports, jointly submitted by the Companies. OCC has authority under Ohio law to represent the interests of all the approximately 2.1 million Ohio 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 these consumers were unrepresented in a proceeding that involves residential energy efficiency programs, demand response programs, and initial benchmark reports. 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 all residential consumers of FirstEnergy. This interest is different from that of any other party and especially different from that of the utility, whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for consumers will include advancing the position that consumers should be provided effective and efficient programs, and that any program costs presented for collection from residential customers must be necessary, justified, and relevant to the achievement of statutory benchmarks. OCC's position is therefore directly related to the merits of these cases pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio.

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 cases 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 will obtain and develop 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 residential energy efficiency programs and residential rates for customers served by the Companies are at stake.

In addition, OCC meets the criteria stated in 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
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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, *via* First Class U.S. Mail, postage prepaid, this 4th day of January 2010.

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Summary: Motion Motion to Intervene By the Office of the Ohio Consumers' Counsel
electronically filed by Ms. Deb J. Bingham on behalf of Mr. Christopher J. Allwein