

FILE

6
RECEIVED-DOCKETING DIV
2010 FEB 16 PM 1:13
PUCO

BEFORE
THE PUBLIC UTILITY COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of Their Energy Efficiency and Demand Reduction Program Portfolio Plans for 2010 and Associated Cost Recovery Mechanisms.

)
)
) Case No. 09-1947-EL-POR
) Case No. 09-1948-EL-POR
) Case No. 09-1949-EL-POR
)

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of Their Initial Benchmark Reports.

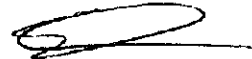
)
) Case No. 09-1942-EL-EEC
) Case No. 09-1943-EL-EEC
) Case No. 09-1944-EL-EEC
)

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
)
) **MOTION FOR LEAVE TO**
) **INTERVENE**

Pursuant to Ohio Revised Code ("R.C.") Section 4903.221 and Ohio Administrative Code Rule 4901-1-11, the Council for Smaller Enterprises ("COSE") respectfully requests that the Public Utilities Commission of Ohio (the "Commission") grant COSE's motion for leave to intervene in these proceedings. The reasons supporting COSE's intervention are contained in the accompanying Memorandum in Support.

Respectfully submitted,



Eric D. Weldele (0077276)
eric.weldele@tuckerellis.com
Tucker Ellis & West LLP
1225 Huntington Center
41 South High Street
Columbus, Ohio 43215-6197
Telephone: 614.358.9717
Facsimile: 614.358.9712

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business
Technician OR Date Processed 2-16-2010

THE PUBLIC UTILITY COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of Their Energy Efficiency and Demand Reduction Program Portfolio Plans for 2010 and Associated Cost Recovery Mechanisms.)
)
) Case No. 09-1947-EL-POR
) Case No. 09-1948-EL-POR
) Case No. 09-1949-EL-POR
)

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of Their Initial Benchmark Reports.)
) Case No. 09-1942-EL-EEC
) Case No. 09-1943-EL-EEC
) Case No. 09-1944-EL-EEC
)

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
)

MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO
INTERVENE

On December 15, 2009, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively "FirstEnergy") filed Applications in the above-captioned cases for approval of their respective: 1) initial three-year energy efficiency and peak demand reduction program portfolios; and 2) initial compliance reports with the energy efficiency and peak demand benchmarks set forth in Amended Senate Bill 221.

R.C. Section 4903.221(B) and OAC Rule 4901-11(A)(2) govern intervention in Commission proceedings. Substantially similar in substance, these provisions explain that the Commission may consider the following in determining whether to grant intervention:

- (1) The nature and extent of the person's interest;¹
- (2) The legal position of the person seeking intervention and its relation to the

¹ ORC 4903.221(B)(1) and OAC 4901-1-11(B)(1).

merits of the case;²

- (3) Whether intervention would unduly delay the proceeding or unjustly prejudice any existing party;³
- (4) The person's potential contribution to full development and equitable resolution of the issues involved in the proceeding;⁴ and
- (5) The extent to which the person's interest is represented by existing parties.⁵

COSE has a real and substantial interest in the above-captioned proceedings. COSE represents 17,000 small commercial customers within FirstEnergy's territory. The small commercial class is not currently represented in these proceeding.

COSE has also served as an aggregator of electricity for its members since 1999 in FirstEnergy's territory. Through COSE's efforts, participating members have realized decreased energy costs, which has allowed them the opportunity to reallocate these resources to other areas of their businesses. Further, last year COSE was designated as one of the Administrators for FirstEnergy's Energy Efficiency and Demand Response program created as part of the Stipulation in last year's ESP proceeding (Case No. 08-935-EL-SSO). See generally *In the Matter of the Application of Ohio Ellison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Administrator Agreements and Statements of Work*, Case No. 09-553-EL-EEC.

The legal issues intended to be raised by COSE directly relate to both the merits of the case and this proceeding's potential impact on COSE and its members and program participants. Granting COSE's motion to intervene will not unduly delay these proceedings, or unjustly

² ORC 4903.221(B)(2) and OAC 4901-1-11(B)(2).

³ ORC 4903.221(B)(3) and OAC 4901-1-11(B)(3).

⁴ ORC 4903.221(b)(4) and OAC 4901-1-11(B)(4).

⁵ OAC 4901-1-11(B)(5).

prejudice any existing party, because COSE is filing this motion prior to the Commission's deadline for intervening. COSE will work cooperatively with others in the case in order to maximize case efficiency where practical, but without compromising COSE's unique position in the State of Ohio.

COSE's intervention and involvement in this case will contribute to the development of a more complete understanding of the meaning and impacts of FirstEnergy's filing on COSE (as an Administrator of FirstEnergy's Energy Efficiency and Demand Response programs), and COSE's efforts regarding energy efficiency and peak demand reduction programs. Additionally, COSE was granted intervention, and actively participated in, FirstEnergy's electric security plan case (Case No. 08-935-EL-SSO), and has been an active participant in FirstEnergy's energy efficiency collaborative meetings implemented following the Commission approval of the ESP Stipulation in Case No. 08-935-EL-SSO.

Finally, COSE submits that no current party represents its interests, and disposition of this proceeding without its participation will impair or impede COSE's ability to protect its interests.

WHEREFORE, the Council of Smaller Enterprises respectfully requests that its motion to intervene be granted.

Respectfully submitted,



Eric D. Weldele (0077276)
eric.weldele@tuckerellis.com
Tucker Ellis & West LLP
1225 Huntington Center
41 South High Street
Columbus, Ohio 43215-6197
Telephone: 614.358.9717
Facsimile: 614.358.9712

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion to Intervene was served upon the parties of record listed below this 14th day of February, 2010 via first class mail.

Kathy T. Kolich
Arthur Korkosz
FirstEnergy Corp.
76 South Main Street
Akron, OH 44308

Jeffrey L. Small
Gregory J. Poulos
Christopher Allwein
Associate Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485

James F. Lang
Laura C. McBride
N. Trevor Alexander
Kevin P. Shannon
Calfee, halter & Griswold LLP
1400 KeyBank Center
700 Superior Avenue
Cleveland, OH 44114

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

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

Andre Porter
Christopher Miller
Gregory Dunn
Todd Jones
Schottenstein Zox & Dunn Co. LPA
250 West Street
Columbus, OH 43215

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

Joseph P. Meissner
The Legal Aid Society of Cleveland
1223 West 6th Street
Cleveland, OH 44113

Joseph M. Clark
Samuel C. Randazzo
Lisa G. McAlister
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215

Will Reisinger
Nolan Moser
Trent A. Dougherty
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449

Tom Lindgren
Attorney General's Office
Public Utilities Commission of Ohio
180 East Broad St., 9th Floor
Columbus, OH 43215

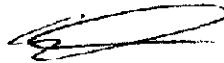
Michael E. Heintz
Environmental Law and Policy Center
1207 Grandview Ave., Suite 201
Columbus, OH 43204

Ted Robinson
Staff Attorney and Counsel
Citizen Power
2121 Murray Ave.
Pittsburgh PA 15217

Richard L. Sites
Ohio Hospital Association
155 East Broad St., 15th Floor
Columbus, OH 43215

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third St.
Columbus, OH 43215

Respectfully submitted,



Eric D. Weldele (0077276)
eric.weldele@tuckerellis.com
Tucker Ellis & West LLP
1225 Huntington Center
41 South High Street
Columbus, Ohio 43215-6197
Telephone: 614.358.9717
Facsimile: 614.358.9712