

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The       )  
Cleveland Electric Illuminating Company    )  
and Energizer Battery Manufacturing Inc.    ) Case No. 09-1116-EL-EEC  
For Approval of a Special Arrangement       )  
Agreement With A Mercantile Customer       )

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**MOTION TO INTERVENE  
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 the Cleveland Electric Illuminating Company ("FirstEnergy" or "Company") and Energizer Battery Manufacturing Inc. ("Energizer" or "Customer") (collectively with FirstEnergy, "Applicants") seek joint approval of a special arrangement under Ohio Adm. Code 4901:1-39-08(B). Approval of this arrangement would exempt Energizer from paying its share of FirstEnergy's Rider DSE2. Approval would also allow FirstEnergy to attribute the energy reductions associated with Energizer's projects to the Company's energy efficiency and demand reduction achievements required for FirstEnergy to meet its benchmarks under S.B. 221 (R.C. 4928.66).

OCC is filing on behalf of approximately 670,000 residential utility consumers of the 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.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

/s/ Ann M. Hotz

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

This case involves the review of the reasonableness and lawfulness of the Applicants' request for approval of their special arrangement filed under Ohio Adm. Code 4901:1-39-08(B). OCC has authority under law to represent the interests of approximately 670,000 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 results in Energizer not paying its share of energy efficiency and demand reduction costs either through FirstEnergy's Rider DSE2 or through a special arrangement it has with FirstEnergy that does not result in sufficient energy savings. The Company's Rider DSE2 recovers costs from customers for programs that allow it to meet its energy efficiency and demand reduction benchmarks under R.C. 4928.66. R.C.4928.143(B)(i) and R.C. 4928.142(D)(3) permit electric

utilities to collect the costs of energy efficiency programs from generation customers.

For the same reason, the application could also result in consumers having to pay additional costs toward FirstEnergy's Rider DSE2, if the Customer's project does not result in the energy efficiency and/or demand reduction level promised. In that case the Company would not gain the energy efficiency and/or demand reduction level expected and would be required to collect from customers additional amounts for additional energy efficiency programs to make up for what the Customer's project does not deliver. 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 in representing the residential consumers of FirstEnergy in this case is whether the Applicants' proposal will result in sufficient energy savings to justify Energizer's opt-out of Rider DSE2. If the energy savings are not sufficient to justify the opt-out all consumers will suffer from the economic and environmental consequences resulting from less energy savings than intended by R.C. 4928.66(A)(10). Under R.C. 4928.66(A)(10) FirstEnergy must meet certain energy savings in years 2009-2025 with money it collects from its customers through its Rider DSE2. In this regard, the issues for consideration include whether an

opt-out for Energizer from paying the energy efficiency rider is justified by the energy savings achieved under the special arrangement. 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 the rates customers pay should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. OCC's position is therefore directly related to the merits of this case that is pending before the PUCO.

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, consistent with any matters that OCC determines to be issues for PUCO consideration and for 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 in which compliance with S.B. 221 benchmarks in a cost-effective manner 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>2</sup>

### **III. CONCLUSION**

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 residential consumers, the Commission should grant OCC’s Motion to Intervene.

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<sup>2</sup> See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

Respectfully submitted,

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/s/ Ann M. Hotz

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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 23rd day of March 2010.

/s/ Ann M. Hotz  
Ann M. Hotz  
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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Mrs. Mary V. Edwards on behalf of Hotz, Ann M. Ms. and Office of the Ohio Consumers' Counsel