

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, the Cleveland Electric)	Case Nos. 11-126-EL-EEC
Illuminating Company, and the Toledo)	11-127-EL-EEC
Edison Company to Amend Their Energy)	11-128-EL-EEC
Efficiency and Peak Demand Reduction)	
Benchmarks.)	

**MOTION TO INTERVENE
AND
MOTION TO ESTABLISH A COMMENT PERIOD
AND
A REQUEST FOR AN EXPEDITED RULING ON THE MOTION FOR A
COMMENT PERIOD
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in these cases where Applicants seek a waiver of obligations to meet the energy efficiency benchmarks in R.C. 4928.66 that are intended to benefit utility customers.¹ OCC is filing on behalf of all the approximately 1.9 million residential utility customers of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy" or "Companies" or "Applicants").

In addition, the OCC moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to establish a comment period in the above-captioned cases.² A comment period is needed to provide interested parties an opportunity to present issues relevant to

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

² Pursuant to Ohio Adm. Code 4901-1-12 and 4901-1-14.

FirstEnergy's request. OCC is requesting an expedited ruling on the motion for a comment period.³ The reasons the PUCO should grant OCC's Motion to Intervene, grant the Motion to Establish a Comment Period and grant the Request for an Expedited Ruling on the Comment Period are further set forth in the attached Memorandum in Support.

Respectfully submitted,

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³ Pursuant to Ohio Adm. Code 4901-1-12(C).

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

These cases involve the review of FirstEnergy’s request that the Commission amend the Companies’ obligations to meet the 2010 energy-efficiency benchmark in accordance with R.C. 4928.66. FirstEnergy asserts that an amendment to their obligations is warranted as a result of “regulatory, economic, or technological reasons beyond [FirstEnergy’s] control.”⁴ In their Application, the Companies request that the Commission “grant this request no later than February 15, 2011.”⁵ 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.

II. MOTION TO INTERVENE

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 customers may be “adversely affected” by these cases, especially if the

⁴ FirstEnergy Application at 1 (January 11, 2011).

⁵ Id. at 2.

customers were unrepresented in proceedings that involve a request to delay, amend 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) 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 customers of FirstEnergy in these cases where the intended benefits to customers of energy efficiency programs mandated by R.C. 4928.66 are at risk. 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 residential customers will include, but not be limited to, advancing the position that FirstEnergy must bear some responsibility for the difficulties in the implementation of its energy efficiency programs. Thus, any amendment, waiver, or delay should be considered only after the PUCO determines to what extent Applicants' conduct has affected their ability to achieve the 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 these 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 these 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 advocate for residential utility customers, OCC has a very real and substantial interest in these cases where the Companies are requesting waivers or amendments from statutory benchmarks mandated for the purpose of benefiting Ohio residential utility customers.

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 customers. 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.⁶ Therefore, the OCC respectfully requests that the PUCO grant its intervention in these cases.

III. MOTION FOR A COMMENT PERIOD

The Commission should establish a comment period that provides interested parties, including the OCC, the opportunity to present their cases regarding FirstEnergy's requested benchmark amendments. OCC proposes the following schedule:

- Initial comments due: February 25, 2011.
- Reply comments due: March 4, 2011.

Precedent exists for the establishment of the requested comment period in these types of cases. For the earlier cases involving the 2009 calendar year, the Companies similarly filed a request for amendments of FirstEnergy's energy efficiency benchmarks.⁷ In those cases, the PUCO issued an Entry establishing a comment period.⁸ OCC requests that the Commission issue a similar Entry in these cases to, at a minimum, afford all

⁶ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

⁷ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company to Amend Their Energy Efficiency Benchmarks*, Case Nos. 09-1004-EL-EEC, *et al.*, (October 27, 2009).

⁸ *Id.*, PUCO Entry at page 1, ¶4 (November 20, 2009).

interested parties the same participation opportunities (a comment period) provided in the previous cases.

The Commission should not hastily decide on whether to approve this amendment application by February 15, 2011, as FirstEnergy requested in its application.⁹ The Companies did not file the request until January 11, 2011. It is unclear why the Companies waited until mid-January to ask for an amendment to their energy efficiency benchmarks.¹⁰ The Companies' last-minute filing does not justify a rush to judgment. These energy efficiency benchmarks are an important part of Ohio's energy policies¹¹ and should not be amended solely on the basis of an application containing inadequate supporting documentation. Therefore, the OCC requests that Commission not adopt the FirstEnergy request to issue an order by February 15, 2011, and instead issue an Entry instituting OCC's recommended comment period.

The information supplied by FirstEnergy to justify the amendments requested should be carefully reviewed by the Commission. The PUCO should allow for comments to be filed from interested parties before any approval is considered. The establishment of a comment period will help ensure that all the issues surrounding the amendment request are presented and considered in the public interest. Therefore, the OCC respectfully requests that the PUCO grant its motion and establish a comment period in these cases.

⁹ FirstEnergy Application at 1 (January 11, 2011).

¹⁰ As noted in footnote 7, the application for energy efficiency benchmark amendments was filed by the Company in October 2009 for that year. FirstEnergy supports their request with information that was available well before January 11 of this year.

¹¹ See R.C. 4928.02(M) and 4928.66.

IV. REQUEST FOR AN EXPEDITED RULING ON THE MOTION FOR A COMMENT PERIOD

OCC is requesting an expedited ruling on the motion for a comment period. The Ohio Administrative Code allows for a specific request for an expedited ruling on any motion.¹² OCC submits this request in order to seek a comment period that concludes before the Companies' Portfolio Status Report is due on March 15th, since the outcome of this case may affect the filing in the Portfolio Status Report case.¹³ Rule 4901-1-12(C) allows the moving party to contact other parties in a case to determine whether any party objects to a request for an expedited ruling. OCC has not contacted other parties to determine whether any party objects to this request.

V. 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 Ohio residential customers, the Commission should grant OCC's Motion to Intervene, grant OCC's Motion for a Comment Period and grant OCC's request for an Expedited Ruling on the Motion for a Comment Period.

¹² Ohio Adm. Code 4901-1-12(C).

¹³ Ohio Adm. Code 4901:1-39-05(C).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene, Motion for a Comment Period and a Request for an Expedited Ruling on the Motion for a Comment Period* was served on the persons stated below via regular U.S. Mail Service, postage prepaid, this 10th day of February, 2011.

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Summary: Motion Motion to Intervene and Motion to Establish a Comment Period and a Request for an Expedited Ruling on the Motion for a Comment Period by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of ALLWEIN, CHRISTOPHER J