

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Report of the Status	)	
of the 2010 Energy Efficiency and Peak	)	Case Nos. 11-2956-EL-EEC
Demand Reduction Benchmarks of the	)	11-2958-EL-EEC
Ohio Edison Company, the Cleveland	)	11-2959-EL-EEC
Electric Illuminating Company and the	)	
Toledo Edison Company.	)	

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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 in these cases where the status of utility company energy efficiency and peak demand reduction programs, including programs that rely on residential customer participation, is reported for evaluation and comment.<sup>1</sup> Program status reports are important indicators of utility company efforts to achieve their compliance with benchmarks in Ohio law.

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"). 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.

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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/ Christopher J. Allwein

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**MEMORANDUM IN SUPPORT**

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These cases involve the review of the reasonableness, lawfulness and effectiveness of the Companies' Energy Efficiency and Peak Demand Reduction Programs. 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 customers may be "adversely affected" by these cases, especially if these customers were unrepresented in a proceeding where the status of programs employed by the Companies to meet statutory benchmark requirements is at issue. The programs presented in this status report include the Companies' recent energy efficiency efforts which involve significant low-income residential customer participation. 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 involving energy efficiency and peak demand reduction programs. 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 advancing the position that energy efficiency and peak demand reduction programs for customers should have verified savings, be cost-effective and foster significant customer participation. 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 residential energy efficiency programs and their effect on customers are at stake.

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.<sup>2</sup>

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.

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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,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

/s/ Christopher J. Allwein

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this *Motion to Intervene by the Office of the Ohio Consumers' Counsel*, was served on the persons stated below via electronic transmission, this 9th day of June 2011.

/s/ Christopher J. Allwein

Christopher J. Allwein  
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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Mary Edwards on behalf of ALLWEIN, CHRISTOPHER J and Office of the Ohio Consumers' Counsel