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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter Of The Application Of Duke) Energy Ohio For Authority To Establish A) Standard Service Offer Pursuant To Section) 4928.143 , Revised Code, In The Form) Of An Electric Security Plan, Accounting) Modifications, And Tariffs For Generation) Service.))	Case No. 11-3549-EL-SSO
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**FIRSTENERGY SOLUTIONS CORP.'S
MOTION TO INTERVENE**

Pursuant to Ohio Revised Code § 4903.221 and Rule 4901-1-11, Ohio Administrative Code, FirstEnergy Solutions Corp. ("FES") moves to intervene in this proceeding, in which Duke Energy Ohio, Inc. seeks approval of its proposed electric security plan ("ESP"). As a certified provider of competitive retail electric service and a wholesale energy supplier, FES has a real and substantial interest in the terms and conditions that will govern the proposed ESP, and those interests are not adequately represented by existing parties. As more fully set forth in the attached memorandum in support, FES respectfully requests that the Commission grant this timely request to intervene.

Dated: June 28, 2011

Respectfully submitted,

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FIRSTENERGY SOLUTIONS CORP.

**BEFORE
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Of An Electric Security Plan, Accounting)	
Modifications, And Tariffs For Generation)	
Service.)	

MEMORANDUM IN SUPPORT

I. INTRODUCTION

On June 20, 2011, Duke Energy Ohio, Inc. ("Duke") filed an Application for approval of its standard service offer ("SSO") in the form of an electric security plan ("ESP") pursuant to R.C. 4928.141 and 4928.143. The ESP provides for "generation service through a bifurcated structure, with capacity supplied by the Company to all customers and energy procured via competitive auctions to serve the needs of those customers who choose to purchase energy from the Company." (*See App.*, pp. 8.) If approved, the ESP will become effective January 1, 2012. (*Id.* at pp. 1.)

As set forth below, FirstEnergy Solutions Corp. ("FES") should be allowed to intervene in this proceeding. As a certified competitive retail electric service ("CRES") provider supplying generation service to many of Duke's customers, and as a regular participant in SSO auctions like the ones Duke proposes here for energy, FES will be directly affected by the outcome of this proceeding, and FES should be permitted to protect its interests. FES' Motion to Intervene should be granted.

II. ARGUMENT

A. Standard Of Review

Intervention in Commission proceedings is governed by R.C. 4903.221 and Rule 4901-1-11, and those authorities are “liberally construed in favor of intervention.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St. 3d 384, 387 (noting that under Rule, “intervention ‘shall’ be allowed by the PUCO” if criteria are met), *quoting State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections* (1995), 74 Ohio St. 3d 143, 144. Consistent with that approach, the Commission routinely allows CRES providers and marketers to intervene and participate in SSO proceedings. *See, e.g., In re App. of Ohio Edison Co., et al., for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Sec. Plan*, Nos. 09-21-EL-ATA, *et al.*, Second Finding and Order dated Mar. 4, 2009, ¶ 5.; *In re App. of The Dayton Power and Light Co. for Approval of its Elec. Sec. Plan, et al.*, Nos. 08-1094-EL-SSO, *et al.*, Entry dated Feb. 5, 2009, ¶¶ 4-6; *In re App. of Duke Energy Ohio, Inc. for Approval of an Elec. Sec. Plan*, Entry dated Sept. 17, 2008, ¶ 5; *In re App. of Duke Energy, Ohio, Inc. For Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply*, No. 10-2586-EL-SSO, Entry Dated Dec. 13, 2010, ¶ 3.

Under Rule 4901-1-11, intervention “shall be permitted” upon a showing that:

- “[t]he person has a real and substantial interest in the proceeding”; and
- “the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person’s interest is adequately represented by existing parties.”

See Rule 4901-1-11(A)(2). In assessing intervention, the Commission also considers:

- “[t]he nature and extent of the prospective intervenor’s interest”;
- “[t]he legal position advanced by the prospective intervenor and its probable relation to the merits of the case”;

- “[w]hether the intervention by the prospective intervenor will unduly prolong or delay the proceedings”;
- “[w]hether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues”; and
- “[t]he extent to which the person’s interest is represented by existing parties.”

See Rule 4901-1-11(B).

FES meets this standard and should be allowed to intervene in this proceeding.

B. FES Has A Real And Substantial Interest In This Proceeding, And Disposition Of This Case Absent FES’ Participation Will Impair FES’ Ability To Protect That Interest.

FES has a real and substantial interest in this proceeding. FES is a leading energy supplier serving residential, commercial and industrial customers throughout the Northeast, Midwest and Mid-Atlantic regions of the United States. FES is a CRES provider in Ohio and provides such service to customers in Duke’s service territory. *See In re App. of FirstEnergy Solutions Corp. for Certification / Renewal As A Competitive Retail Elec. Service Provider*, No. 00-1742-EL-CRS, Renewal Certificate No. 00-011E(6).

FES has a real and substantial interest in this proceeding, in which the Commission will determine the terms and conditions under which Duke will procure its SSO load under the ESP. Because FES competes to provide CRES to customers in Duke’s service territory, the conduct and outcome of the ESP will have a direct impact on FES’ economic interests. Moreover, because FES regularly participates as a bidder in SSO auctions like the ones Duke proposes here (and may, in fact, participate in Duke’s auction), FES has a real and substantial interest in this proceeding. The Commission’s disposition of this proceeding without FES’ intervention may, as a practical matter, impair FES’ ability to protect its interests, and none of the other parties who have sought intervention here can adequately represent its interests.

Furthermore, because FES has significant experience in supplying competitive electric energy products and in participating in Commission proceedings, FES will bring unique expertise to this case and will meaningfully contribute to the resolution of issues. *See, e.g., In re App. of Duke Energy Ohio, Inc. to Amend its Elec. Tariff 20 to Increase its CRES Accounts Receivable Purchase Discount Rate*, No. 09-1026-EL-ATA, Mot. to Intervene of FES, dated June 24, 2010; *In re App. of Ohio Edison Co., The Cleveland Elec. Illum. Co. and The Toledo Edison Co., for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer, et al.*, No. 09-906-EL-SSO, Mot. to Intervene of FES, dated Nov. 25, 2009; *In re App. of Duke Energy Ohio, Inc. For Approval of a Market Rate Offer To Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply*, No. 10-2586-EL-SSO, Mot. To Intervene of FES, No. 10-2586-EL-SSO, dated Nov. 19, 2010.

C. FES' Participation Will Not Unduly Prolong Or Delay This Proceeding.

FES' participation in this proceeding will not unduly prolong or delay it. In fact, this proceeding is in its early stages. The Application was filed on June 20, 2011, and FES files this Motion in advance of the July 6, 2011, deadline for doing so. FES' participation will not delay the Commission's review of the proposed ESP. As described above, FES will meaningfully contribute to the full consideration of the issues presented in this proceeding.

III. CONCLUSION

For the foregoing reasons, FES' Motion to Intervene should be granted.

Dated: June 28, 2011

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion To Intervene and Memorandum in Support of Motion were sent by first class U.S. mail, postage prepaid, to the following this 28th day of June, 2011.

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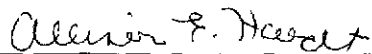
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