

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Application of Duke)	
Energy Ohio, Inc. for Authority to)	
Establish a Standard Service Offer)	
Pursuant to Section 4928.143, Revised)	Case No. 11-3549-EL-SSO
Code, in the Form of an Electric Security)	
Plan, Accounting Modifications and)	
Tariffs for Generation Service.)	

**MOTION TO INTERVENE
AND
REQUEST FOR LEAVE TO FILE MOTION TO INTERVENE OUT OF TIME
BY THE
COUNCIL OF SMALLER ENTERPRISES (COSE)**

By the above-styled applications, Duke Energy Ohio, Inc. ("Duke") seeks approval of a standard service offer ("SSO") in the form of an electric security plan. As more fully discussed in the accompanying memorandum, the Council of Smaller Enterprises ("COSE") has a real and substantial interest in this proceeding, and is so situated that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect that interest. Further, COSE's interest in this proceeding is not represented by any existing party, and its participation in this proceeding will contribute to a just and expeditious resolution of the issues involved without unduly delaying the proceeding or unjustly prejudicing any existing party. Accordingly, COSE hereby moves to intervene in this proceeding pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code.

COSE recognizes that the procedural schedule set forth in the entry issued in this proceeding on June 21, 2011 provided that motions to intervene should be filed by July 6, 2011. Although COSE has intervened in previous Commission proceedings, undersigned counsel was heretofore unaware of COSE's interest in this proceeding and the July 6, 2011 due date for motions to intervene in this docket.

Thus, COSE respectfully requests that the Commission entertain its motion to intervene, notwithstanding that it is being filed after the specified due date. Given the procedural posture of

the case, no party will be prejudiced by granting COSE's request¹. If its motion to intervene is granted, COSE will, of course, accept the record as it finds it.

WHEREFORE, COSE respectfully requests that the Commission grant its request for leave to file out of time and grant its motion to intervene.

Respectfully submitted.



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¹ Pursuant to the June 21, 2011 procedural entry, the cut-off date for written discovery is September 9, 2011, and the hearing will not commence until September 20, 2011.

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**MEMORANDUM IN SUPPORT
OF
MOTION TO INTERVENE
OF
COUNCIL OF SMALLER ENTERPRISES (COSE)**

I. Background

The Council of Smaller Enterprises ("COSE"), one of Ohio's largest small business support organizations, strives to help small businesses grow and maintain their independence. Comprised of more than 15,000 member companies, COSE has a long history of fighting for the rights of all small business owners, whether it's through group purchasing programs in healthcare, workers' compensation, electricity, payroll services, shipping, or advocating for specific changes in legislation or regulation. COSE also produces more than 100 networking and business education events each year - all focused on connecting our members to each other to increase their ability to succeed. In addition, we provide a variety of informational and educational resources to help small businesses better understand today's energy market to all of our 15,000 members.

COSE, a certified Competitive Retail Electric Service Provider, started a group electric aggregation program for our members in 1999. Since that time, we have enrolled more than 6,300 electric accounts, which provide annual electricity cost savings to participating COSE members and their employees. The COSE Electric Program currently serves members within the FirstEnergy service territory. Since the enactment of Senate Bill 221, COSE recognized the need for small businesses to engage in energy efficiency and alternative energy technologies. COSE has been working to develop products and programs to educate small business owners on the use and advantages of energy efficiency and alternative energy technologies within their work

places. In fact, in 2009 COSE was designated as one of the Administrators for FirstEnergy's Energy Efficiency and Demand Response program created as part of the Stipulation in First Energy's ESP proceeding (Case No. 08-935-EL-SSO).² In both instances, COSE wishes to have the ability to offer these programs to any current or future members outside of the First Energy service area.

By the above-styled applications filed herein on June 20, 2011, Duke Energy Ohio, Inc. ("Duke") seeks approval of an ESP-based SSO pursuant to Sections 4928.143, Revised Code, and Chapter 4901:1-35, Ohio Administrative Code ("OAC"). COSE's interests in expanding its electric aggregation and energy efficiency programs are wholly reliant on COSE's participation in this proceeding and its outcome. Further, not only does COSE satisfy the underlying statutory test for intervention in Commission proceedings, it also satisfies the standards governing intervention set forth in the Commission's rules.

II. Legal Authority

For purposes of considering a request for leave to intervene in a Commission proceeding, Rule 4901-1-11(A), OAC, provides, in pertinent part, as follows:

Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that: ...

(2) The 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 ability to protect that interest, unless the person's interest is adequately represented by existing parties.

Further, Section 4903.221(B), Revised Code and OAC Rule 4901-1-11(B), provide that the Commission, in ruling upon applications to intervene in its proceedings, shall consider the following criteria:

(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.

² 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.

- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.
- (5) The extent to which the person's interest is represented by existing parties.

III. Argument

COSE clearly meets the requirements for intervention as outlined above. Because of its interest in providing its energy programs to current and future members in Duke's service territory, COSE has a real and substantial interest in these proceedings. Additionally, without appropriate consideration of small commercial users, small businesses could be faced with higher energy costs and difficulty accessing energy efficiency and demand reduction programs, both of which could prove hazardous for their businesses.

As a true representative of small businesses, COSE's knowledge will assist the Commission in considering the issues in this case and, accordingly, COSE's participation will positively contribute to the full development and equitable resolution of the issues as they relate to small commercial customers. No other party participating in this case is able to adequately represent the needs of COSE as an organization, its members or small commercial users as a whole. Accordingly, COSE welcomes the ability to share their program experiences and unique small business perspectives with the Commission as it works with the utility and others to develop effective outcomes for this case.

Although COSE's motion is filed pursuant to a request for leave to file out of time, a limited amount of time has passed since the otherwise applicable July 6, 2011 deadline for intervention. In view of the procedural posture of this case and COSE's representation that it will take the record as it finds it, granting COSE's motion to intervene will not unduly delay or prolong the proceeding or unjustly prejudice any existing party.

COSE submits that no current party represents its interests, and disposition of this proceeding without COSE's participation will impair and impede its ability to advance and protect its interests as well as the interests of small commercial users in the State.

IV. Conclusion

Given the diverse and unique energy needs of its current and future members, and in order to protect the interests of small commercial customers in the state, COSE states that it has a direct, real and substantial interest in the issues in this matter, which can only be protected by its participation. COSE respectfully requests that the Commission grant its motion to intervene with the full powers, rights and privileges granted by the Commission, by statute and by the provisions of the Ohio Administrative Code, to intervening parties.

Respectfully submitted.



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by electronic mail this 29th day of July, 2011.



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Summary: Motion to Intervene and Request for Leave to File Motion to Intervene Out of Time by the Council of Smaller Enterprises (COSE) electronically filed by Mr. Matthew R Cox on behalf of Council of Smaller Enterprises (COSE)