

BEFORE
THE PUBUC UTILITIES COMMISSION OF OHIO

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In the Matter of Ohio Edison Company, :
The Cleveland Electric Illuminating :
Company/ and The Toledo Edison :
Company for Authority to Provide for a :
Standard Service Offer Pursuant to Section :
4928.143, Revised Code, in the Form of an :
Electric Security Plan. :

PUCO
Case No. 12-1230-EL-SSO

MOTION TO INTERVENE
AND
REQUEST FOR LEAVE TO FILE MOTION TO INTERVENE OUT OF TIME
OF
THE CLEVELAND MUNICIPAL SCHOOL DISTRICT

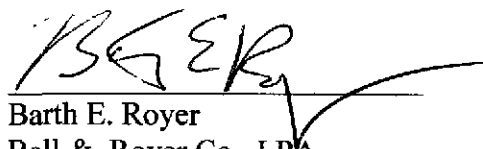
By the above-styled application, Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy") seeks approval of a standard service offer ("SSO") in the form of an electric security plan ("ESP"). As more fully discussed in the accompanying memorandum, the Cleveland Municipal School District ("CMSD") 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, CMSD'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, CMSD hereby moves to intervene in this proceeding pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code.

CMSD recognizes that the procedural schedule set forth in the entry issued in this proceeding on April 19, 2012 provided that motions to intervene should be filed by April 30,

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2012. CMSD respectfully requests that the Commission entertain its motion to intervene, notwithstanding that it is being filed three days after the specified due date. Granting CSMD leave to file its motion to intervene out of time would be consistent with the Commission's policy of encouraging the broadest possible participation in its proceedings,¹ and would also be consistent with the disposition of similar requests to file motions to intervene out of time in other SSO proceedings.² Further, CMSD notes that the original procedural schedule has since been extended certain other respects,³ and that, in view of the procedural posture of the case, no party will be prejudiced by granting CMSD's request.⁴ If its motion to intervene is granted, CMSD will, of course, accept the record as it finds it.

Respectfully submitted,



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¹ See, e.g., *Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR (Entry dated January 14, 1986, at 2).

² See, e.g., *Duke Energy Ohio*, Case Nos. 08-920-EL-SSO, *et al.* (Entry dated September 17, 2008, at 4) and *The Dayton Power and Light Company*, Case Nos. 08-1094-EL-SSO, *et al.* (Entry dated February 5, 2009, at 2).

³ See Entry dated May 2, 2012 (extending the due date for the filing of intervenor testimony to May 21, 2012 and the date for the commencement of the hearing to June 4, 2012).

⁴ Although the April 19, 2012 entry shortened the time period for responding to discovery, the procedural schedule set forth in the entry did not establish a case-specific cut-off date for discovery. Thus, pursuant to Rule 4901-1-17, Ohio Administrative Code, discovery may be conducted up to the date of the commencement of the hearing, which is now more than a month away.

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MEMORANDUM IN SUPPORT
OF
MOTION TO INTERVENE
OF
THE CLEVELAND MUNICIPAL SCHOOL DISTRICT

On April 13, 2012, The Ohio Edison Company, The Cleveland Electric Illuminating Company (“CEI”), and The Toledo Edison Company (collectively, “FirstEnergy”) filed the above-styled application seeking approval of a standard service offer (“SSO”) pursuant to Section 4928.141, Revised Code, by proposing to implement an electric security plan (“ESP”). Section 4903.221, Revised Code, provides that any “person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding.” CMSD is a political subdivision of the state of Ohio responsible for the operation of the public school system in the city of Cleveland, Ohio. CMSD operates some 100 school and administrative buildings, wherein it educates some 45,000 students. As a customer of CEI, CMSD may be adversely affected by the terms of the ESP ultimately approved as a result of FirstEnergy’s application in its application in this case. Further, not only does CMSD satisfy the underlying statutory test for intervention in Commission proceedings, but it also satisfies the standards governing intervention set forth in the Commission’s rules.

Rule 4901-1-11(A), OAC, provides, in pertinent part, as follows:

(A) 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.

As a customer of CEI, CMSD plainly has a real and substantial interest in a proceeding in which the Commission is being asked to determine rates and charges to which CMSD will or may be subject. At this juncture, none of the pending motions to intervene in this proceeding have been granted. Thus, by definition, no existing parties adequately represent CMSD's interest.

Although CMSD does not believe this to be a close question, each of the specific considerations that the Commission may, by rule, take into account in applying the Rule 4901-1-11(A)(2), OAC, standard, also fully support granting CMSD's motion to intervene. Rule 4901-1-11(B), OAC, provides as follows:

In deciding whether to permit intervention under paragraph (A)(2) of this rule, the commission, the legal director, the deputy legal director, or an attorney examiner case shall consider:

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

First, as previously explained, CMSD's interest in connection with the proposals set forth in the application is obviously direct and substantial. Second, although CMSD must necessarily await further developments, such as the filing of intervenor testimony, before determining the specific positions it will adopt with respect to the issues in this proceeding, CMSD will certainly advocate that the terms of the ESP adopted as a result of this proceeding be fair, reasonable, non-discriminatory, and designed to promote competition. Third, although CMSD's motion is filed pursuant to a request for leave to file out of time, only three business days have elapsed since the otherwise applicable April 30, 2012 deadline for intervention. In view of the procedural posture of this case and CMSD's representation that it will take the record as it finds it, granting CMSD's motion to intervene will not unduly delay or prolong the proceeding. Fourth, although the specific degree of CMSD's participation is yet to be determined, CMSD's presence will contribute to a fair and equitable result that is in the public interest. Finally, not only are there no existing parties that represent CMSD's interest, but it would be inconsistent with the Commission's stated policy "to encourage the broadest possible participation in its proceedings"⁵ to deny CMSD's. Thus, granting CMSD intervenor status is consistent with all the considerations set out in Rule 4901-1-11(B), OAC.

WHEREFORE, CMSD respectfully requests that the Commission grant its motion to intervene.

Respectfully submitted,



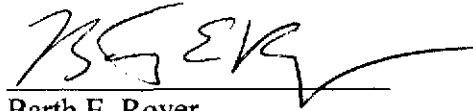
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⁵ See, e.g., *Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2.

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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 3rd day of May 2012.



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