

FILE

9

RECEIVED-BOOKETING DIV

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

2012 MAY -3 PM 4:46

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,

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician And Date Processed MAY 03 2012

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,



Barth E. Royer
Bell &, Royer Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
(614) 228-0704 – Phone
(614) 228-0201 – Fax
BarthRoyer@aol.com – Email

Attorney for
The Cleveland Municipal School District

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.

BEFORE
THE PUBUC UTILITIES COMMISSION OF OHIO

In the Matter of Ohio Edison Company, :
The Cleveland Electric Illuminating :
Company/ and The Toledo Edison :
Company for Authority to Provide for a : Case No. 12-1230-EL-SSO
Standard Service Offer Pursuant to Section :
4928.143, Revised Code, in the Form of an :
Electric Security Plan. :

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,



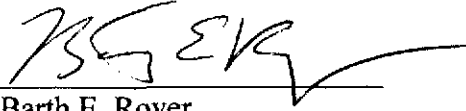
Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927

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

(614) 228-0704 – Phone
(614) 228-0201 – Fax
BarthRover@aol.com – Email

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.



Barth E. Royer

Arthur E. Korkosz
James W. Burk
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308
korkosza@firstenergycorp.com
burkj@firstenergycorp.com

James F. Lang
Laura C. McBride
Calfee, Halter & Griswold LLP
1400 KeyBank Center
800 Superior Ave
Cleveland, OH 44114
jlang@calfee.com
lmcbride@calfee.com

David A. Kutik
Jones Day
901 Lakeside Avenue
Cleveland, Ohio 44114
dakutik@jonesday.com

Larry S. Sauer
Terry L. Etter
Melissa R. Yost
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
sauer@occ.state.oh.us
etter@occ.state.oh.us
yost@occ.state.oh.us

Samuel Randazzo
McNees Wallace & Nurick LLC
Fifth Third Center
21 East State Street, 17th Floor
Columbus, OH 43215-4228
sam@mwncmh.com

David F. Boehm, Esq.
Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street
Suite 1510
Cincinnati, OH 45202
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com

Joseph M. Clark
6641 North High Street, Suite 200
Worthington, Ohio 43805
jmclark@vectren.com

Vincent Parisi
Matthew White
Interstate Gas Supply, Inc.
6100 Emerald Parkway
Dublin, Ohio 43016
vparisi@igsenergy.com
mswhite@igsenergy.com

Duane W. Luckey
Thomas McNamee
William L. Wright
Attorney General's Office
Public Utilities Section
180 East Broad Street, 9th Floor
Columbus, Ohio 43215
thomas.mcnamee@puc.state.oh.us
duane.luckey@puc.state.oh.us
william.wright@puc.state.oh.us

Thomas J. O'Brien
Matthew W. Warnock
Lisa McAlister
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
tobrien@bricker.com
mwarnock@bricker.com
lmcAlister@bricker.com

Matthew J. Satterwhite
Steven T. Nourse
American Electric Power Service
Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
mjsatterwhite@aep.com
stnourse@aep.com

Christopher J. Allwein
Williams, Allwein and Moser, LLC
1373 Grandview Ave., Suite 212
Columbus, OH 43212
callwein@wamenergylaw.com

M. Howard Petricoff
Lija Kaleps-Clark
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, Ohio 43215
mhpeticoff@vorys.com
lkalepsclark@vorys.com

Cynthia Fonner Brady
David Fein
550 W. Washington Street, Suite 300
Chicago, IL 60661
cynthia.a.fonner@Constellation.com
david.fein@constellation.com

Morgan Parke
FirstEnergy Solutions
76 South Main Street
Akron, Ohio 44308
parkem@firstenergycorp.com

Joseph P. Meissner, Esq.
The Legal Aid Society of Cleveland
1223 W. 6th Street
Cleveland, Ohio 44113
jpmeissner@lasclv.org

Trent A. Dougherty
1207 Grandview Ave. Suite 201
Columbus, Ohio 43115
trent@theoec.org

Robert Kelter
35 East Wacker Drive #1600
Chicago, Illinois 60601
rkelter@elpc.org

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
cmoonev2@columbus.rr.com

Glenn S. Krassen
BRICKER & ECKLER LLP
1375 East Ninth Street
Suite 1500
Cleveland, Ohio 44114
gkrassen@bricker.com

Stephen Bennett
Exelon Generation Company, LLC
300 Exelon Way
Kennett Square, PA 19348
stephen.bennett@exeloncorp.com

Sandy I-ru Grace
Exelon Business Services Company
101 Constitution Avenue N.W.,
Suite 400 East
Washington, DC 20001
sandy.grace@exeloncorp.com

Christopher L. Miller
Gregory H. Dunn
Asim Z. Haque
Ice Miller
250 West Broad Street
Columbus, Ohio 43215
christopher.miller@icemiller.com
gregory.dunn@icemiller.com
asim.haque@icemiller.com

Leslie A. Kovacik
City of Toledo
420 Madison Ave. Suite 100
Toledo, Ohio 43604
leslie.kovacik@toledo.oh.gov

Thomas R. Hays
Lucas County Prosecutors Office
700 Adams St., Suite 251
Toledo, Ohio 43604
trhays@gmail.com

Judi L. Sobecki
Randall V. Griffin
Dayton Power & Light Company
1065 Woodman Drive
Dayton, Ohio 45432
judi.sobecki@DPLINC.com
randall.griffin@DPLINC.com

Mark S. Yurick
Taft Stettinius & Hollister LLP
65 East State Street
Suite 1000
Columbus, Ohio 43215
myurick@taft1law.com

Michael K. Lavanga
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, N.W.
8th Floor, West Tower
Washington, D.C., 20007
mkl@bbrslaw.com

Amy B. Spiller
Dorothy K. Corbett
Duke Energy Retail Services
139 East Fourth Street
1303-Main
Cincinnati, OH 45202
amy.spiller@duke-energy.com
dorothy.corbett@duke-energy.com

Craig L. Smith
15700 Van Aken Blvd., #26
Shaker Heights, Ohio 44120
wttpmlc@aol.com

Jeanne W. Kingery
Duke Energy Commercial Asset Mgmt.
139 East Fourth Street
1303-Main
Cincinnati, OH 45202
jeanne.kingery@duke-energy.com