BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2013 through 2015.	)))))))	Case No. 12-2190-EL-POR Case No. 12-2191-EL-POR Case No. 12-2192-EL-POR

MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy" or the "Company") have filed an application concerning their 2013-2015 Energy Efficiency and Peak Demand Reduction (EE/PDR) Program Portfolio Plan ("EE/PDR Portfolio Plan"). This EE/PDR Portfolio Plan is to be implemented to assure that FirstEnergy meets the energy efficiency benchmarks contained in R.C. 4928.66 that are intended to benefit Ohio consumers.[1] OCC is filing on behalf of the residential utility customers of the Company. 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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[1] *See* R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

Respectfully submitted,

BRUCE J. WESTON
CONSUMERS' COUNSEL

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MEMORANDUM IN SUPPORT

These cases involve the review of the reasonableness and lawfulness of the EE/PDR Portfolio Plan submitted by FirstEnergy on July 31, 2012. OCC has authority under law to represent the interests of the residential utility customers of the Company pursuant to R.C. Chapter 4911. In addition, 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 this case, especially if the customers were unrepresented in a proceeding evaluating the Company's EE/PDR Portfolio Program.[2] 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;

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[2] OCC generally supports the revised procedural schedule proposed by the Environmental Law & Policy Center, Natural Resources Defense Council, Ohio Environmental Council and Sierra Club in their August 3, 2012 Objection filed in this docket.

(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 this case involving the Company's EE/PDR Portfolio Plan, and its compliance with energy efficiency benchmarks contained in R.C. 4928.66. 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 customers should be provided effective and efficient programs consistent with Ohio law, and that program costs are reasonable. OCC's position is therefore directly related to the merits of this case that is 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 the case 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 the case 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 this case because residential programs and residential rates for customers served by the Company 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 deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying OCC's interventions and that OCC should have been granted intervention in both proceedings.[3]

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.

[3] *See Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below *via* electronic service this 6th day of August 2012.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/6/2012 4:41:26 PM

in

Case No(s). 12-2190-EL-POR, 12-2191-EL-POR, 12-2192-EL-POR

Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Kern, Kyle L.