

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc., to Adjust Rider DR-IM) Case No. 13-1141-GE-RDR
and Rider AU for 2012 SmartGrid Costs.)
)
)

MOTION TO INTERVENE BY FIRSTENERGY SOLUTIONS CORP.

Pursuant to Ohio Revised Code § 4903.221 and O.A.C. 4901-1-11, FirstEnergy Solutions Corp. (“FES”) moves to intervene in these proceedings. FES has a number of real and substantial interests in these proceedings and its interests, which may be prejudiced by the results of these proceedings, are not adequately represented by existing parties. Thus, as set forth more fully in the attached memorandum in support, FES respectfully requests that the Commission grant this timely request to intervene.

Respectfully Submitted,

/s/ Scott J. Casto

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**MEMORANDUM IN SUPPORT OF THE MOTION TO INTERVENE
OF FIRSTENERGY SOLUTIONS CORP.**

I. Introduction

In the Application of Duke Energy Ohio to Adjust Rider DR-IM and Rider AU for 2012 SmartGrid Costs (the “Application”), Duke Energy Ohio (“Duke”) seeks the approval to recover certain SmartGrid costs from each residential electricity customer. As a certified competitive retail electric service (“CRES”) provider, the ability of FES to compete and sign customers within Duke’s service territory is impacted by Duke’s dynamic pricing pilot programs and Duke’s desire to implement a new, customizable pilot program.

II. Legal Standard

R.C. § 4903.221 provides that any “person who may be adversely affected by a public utilities commission proceeding” may intervene in the proceeding. The Commission’s own rules reinforce the right to intervene:

Upon timely motion, any person *shall be* permitted to intervene in a proceeding 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.

O.A.C. 4901-1-11(A) (emphasis added). “The regulation’s text is very similar to Civ. R. 24 – the rule governing intervention in civil cases in Ohio – which is generally liberally construed in favor of intervention.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 387 (2006) (internal quotations omitted). In considering a motion to intervene, the Commission’s rule directs that the Commission should consider: the nature and extent of the intervenor’s interest; the legal position advanced by the intervenor and its probable relation to the merits of the case; whether intervention will unduly prolong or delay the proceedings; whether the intervenor will significantly contribute to full development and equitable resolution of the factual issues; and the extent to which the intervenor’s interest is represented by existing parties. *See* O.A.C. 4901-1-11(B)(1)-(5); *see also* R.C. § 4903.221(B)(1)-(4). FES’s motion to intervene satisfies each of these factors.

III. Argument

A. The Nature And Extent Of FES’s Interest

FES currently serves residential customers through active contracts and government aggregation programs. As such, FES has a substantial interest in the outcome of this proceeding and in ensuring that the proposed adjustments do not adversely effect a customer’s ability to shop, and FES’s ability to compete as a CRES provider. Due to FES’s unique position as a CRES provider with both mass residential and government aggregation customers, no other party to this proceeding adequately represents FES’s interests.

B. The Legal Position Asserted by FES

FES seeks to intervene to ensure that the details of the underlying programs in the Application are implemented in a manner consistent with all relevant legal principles.

C. FES's Intervention Will Not Unduly Prolong Or Delay The Proceedings

The Application was filed on June 28, 2013, and the Commission's scheduling order allows motions to intervene to be filed by September 19, 2013. As a result, FES's Motion to Intervene is timely and will not prejudice any existing parties or unduly prolong or delay the proceedings.

D. FES Will Contribute To the Full Development Of Factual Issues And FES's Interest Are Not Already Represented By Existing Parties

FES is uniquely situated to contribute to the full development of factual issues in this case as one of the largest CRES and wholesale providers in the state. FES's participation will significantly contribute to the full development and resolution of the issues raised by the Application because FES has significant experience participating in Commission proceedings. FES's interests are not already represented by existing parties, as no other party currently involved in this proceeding currently represents the interests of FES in serving retail customers in Duke's territory.

IV. Conclusion

WHEREFORE, FES respectfully requests that the Commission grant this Motion to Intervene and allow FES to be made a party of record in this proceeding.

Respectfully Submitted,

/s/ Scott J. Casto

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Intervene of FirstEnergy Solutions Corp.* was served this 19th day of September, 2013, via e-mail upon the parties below.

/s/ Scott J. Casto

One of the Attorneys for FirstEnergy Solutions Corp.

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Summary: Motion Motion to Intervene and Memorandum in Support electronically filed by Mr. Scott J Casto on behalf of FirstEnergy Solutions Corp.