

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Ohio Schools Council, Ohio School Boards	)	
Association, Ohio Association of School	)	
Business Officials, and Buckeye Association	)	
of School Administrators, dba	)	
Power4Schools,	)	
	)	
Complainants,	)	Case No. 14-1182-EL-CSS
	)	
v.	)	
	)	
FirstEnergy Solutions Corp.,	)	
	)	
Respondent.	)	

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**MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT  
OF THE TIMKEN COMPANY, MARATHON PETROLEUM COMPANY, WAUSAU PAPER  
TOWEL AND TISSUE LLC, ASHTA CHEMICALS INC., COLUMBUS CASTINGS, THE  
LINCOLN ELECTRIC COMPANY, DELPHI CORPORATION, AND LANDMARK PLASTIC  
CORPORATION**

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**July 17, 2014**

**Attorneys for Movants**

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THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**MOTION TO INTERVENE OF THE TIMKEN COMPANY, MARATHON PETROLEUM  
COMPANY, WAUSAU PAPER TOWEL AND TISSUE LLC, ASHTA CHEMICALS INC.,  
COLUMBUS CASTINGS, THE LINCOLN ELECTRIC COMPANY, DELPHI  
CORPORATION, AND LANDMARK PLASTIC CORPORATION**

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The Timken Company, Marathon Petroleum Company, Wausau Paper Towel and Tissue LLC, ASHTA Chemicals Inc., Columbus Castings, The Lincoln Electric Company, Delphi Corporation, and Landmark Plastic Corporation (“Movants”) hereby respectfully move the Public Utilities Commission of Ohio (“Commission”), pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code, for leave to intervene in the above-captioned matter with the full powers and rights granted by the Commission, specifically by statute or by the provisions of the Ohio Administrative Code, to intervening parties.

As demonstrated further in the Memorandum in Support attached hereto and incorporated herein, Movants have a direct, real, and substantial interest in the issues

and matters involved in the above-captioned 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. Movants believe that its participation will not unduly prolong or delay this proceeding and that it will significantly contribute to the full development and equitable resolution of the factual and other issues in the proceeding. The interests of Movants will not be adequately represented by other parties to the proceeding and, as such, Movants are entitled to intervene with the full powers and rights granted by the Commission, specifically by statute and by the provisions of the Ohio Administrative Code, to intervening parties.

Respectfully submitted,

/s/ Frank P. Darr  
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**MEMORANDUM IN SUPPORT**

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In support of this Motion to Intervene, Movants state they are customers of FirstEnergy Solutions Corp (“FES”). FES provides competitive retail electric services (“CRES”) under contracts with each Movant.

On July 3, 2014, Ohio Schools Council, Ohio School Boards Association, Ohio Association of School Business Officials, and Buckeye Association of School Administrators, dba Power4Schools (“Complainants”) filed a multi-count complaint (“Complaint”) in this proceeding. The Complaint alleges that certain of the Complainants’ participating members are customers of Ohio electric distribution utilities (“EDU”) and customers that receive CRES from FES, the Respondent in this proceeding.

Movants are also EDU customers and have received or are receiving competitive retail electric service from Respondent pursuant to Customer Supply Agreements (“CSA”) that contain provisions either identical to or substantially similar to the provisions described in the Complaint.

As more specifically described in the Complaint, FES has subjected or has threatened to subject Complainants’ participating members to an extra charge (called an “RTO Expense Surcharge”) based on a claim by FES that it is entitled to pass-through certain costs which FES claims to have been billed by PJM Interconnection LLC (“PJM”).

FES also has subjected or has threatened to subject Movants to an extra charge, an RTO Expense Surcharge, based on a claim by FES that it is entitled to pass-through certain costs which FES claims that it has been billed by PJM. Based on Movants’ information or belief, non-residential customers of FES that are located throughout Ohio are similarly situated to Movants and Complainants with regard to the general efforts by FES to bill and collect an RTO Expense Surcharge.

The Movants, individually, have, pursuant to the controlling CSA, disputed FES’s right to bill and collect the RTO Expense Surcharge. Some Movants have also withheld payment of the disputed amount, in accordance with their right to do so under their CSA with FES. The Movants are current in their payments to both FES and their individual EDU or EDUs although they may have withheld or will withhold payment of the disputed amount of the RTO Surcharge Expense. Based on Movants’ information or belief, once they have notified FES that they dispute FES’s right to bill and collect the RTO Expense Surcharge, Movants and all similarly situated customers may withhold payment of the disputed amount pending the resolution of the dispute. Based on Movants’ information

or belief, once Movants or any similarly situated customers have properly withheld payment of the disputed amount, the disputed amount is not due and payable and is, therefore, not subject to late payment charges, penalties, or any other action by FES (or its billing and collection agents) that may be based on FES's RTO Expense Surcharge claim and may adversely affect the interests of Movants or similarly situated customers.

As part of their request for relief, Complainants have, among other things, asked the Commission to find that FES's communications, billing, or collection of the RTO Expense Surcharge violate certain provisions of the Ohio Revised Code and Ohio Administrative Code that apply to FES as a CRES provider. This portion of Complainants' requested relief will or may, as a practical matter, affect the interest of Movants.

The Complainants also request that the Commission suspend FES's certificate to provide CRES in the State of Ohio. This portion of the Complainants' requested relief will, if granted by the Commission, affect all FES retail customers in Ohio including Movants. To the extent that FES's CRES certificate is suspended as Complainants have requested, FES may be unable to perform in accordance with its existing retail service agreements since such certification is a condition for the provision of CRES in the State of Ohio.

Movants have a real and substantial interest in this proceeding. The disposition of the Complaint and the relief requested therein may, as a practical matter, impair or impede Movants' ability to protect that substantial interest unless Movants are able to intervene and participate in this proceeding. Movants' business interests are either not represented at all by Complainants or are not adequately represented by Complainants. Based on Movants' experience with PJM and, more broadly, wholesale electric markets,

Movants will significantly contribute to full development and equitable resolution of factual issues raised by the Complaint and the relief requested therein. Additionally, and by separate motion, the Movants are seeking interim and preliminary orders to assure that they and similarly situated parties are not adversely affected while they and FES address the bona fide billing disputes regarding the RTO Expense Surcharge. Accordingly, Movants urge the Commission to grant the Movants' Motion to Intervene.

Respectfully submitted,

/s/ Frank P. Darr  
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**Attorneys for Movants**

**CERTIFICATE OF SERVICE**

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Motion to Intervene of The Timken Company, Marathon Petroleum Company, Wausau Paper Towel and Tissue LLC, ASHTA Chemicals Inc., Columbus Castings, The Lincoln Electric Company, Delphi Corporation, and Landmark Plastic Corporation* was sent by, or on behalf of, the undersigned counsel for Movants to the following parties of record this 17th day of July 2014, *via* electronic transmission.

/s/ Frank P. Darr \_\_\_\_\_  
Frank P. Darr

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RESPONDENT



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**7/17/2014 4:43:34 PM**

**in**

**Case No(s). 14-1182-EL-CSS**

Summary: Motion Motion to Intervene electronically filed by Mr. Frank P Darr on behalf of The Timken Company and Marathon Petroleum Company and Wausau Paper Towel and Tissue LLC and ASHTA Chemicals Inc. and Columbus Castings and The Lincoln Electric Company and Delphi Corporation and Landmark Plastic Corporation