

**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.)	


***POWER4SCHOOLS' MEMORANDUM CONTRA
INDUSTRIAL CUSTOMERS' AND OHIO MANUFACTURERS' ASSOCIATION
MOTIONS TO INTERVENE***

Ohio Schools Council, Ohio School Boards Association, Ohio Association of School Business Officials, and Buckeye Association of School Administrators, dba Power4Schools ("P4S"), through counsel and pursuant to Ohio Admin. Code § 4901-1-12(B)(1), oppose the motions to intervene in this proceeding filed July 17 or 21, 2014, by The Timken Company, Marathon Petroleum Company, Wausau Paper Towel and Tissue LLC, ASHTA Chemicals Inc., Columbus Castings, The Lincoln Electric Company, Delphi Corporation, Landmark Plastic Corporation, Navco Enterprises.Com, Inc., Navco Enterprises of P.V., Inc., Navco Enterprises, Inc., Foodlife International, Inc., Navco Enterprises of O.V., Inc. and Navco of York Road, Inc. (collectively, "Industrial Customers"). P4S also opposes the motion to intervene filed July 29, 2014, by the Ohio Manufacturers' Association ("OMA").

As more fully explained in the attached Memorandum in Support, P4S

respectfully requests the Public Utilities Commission of Ohio ("Commission") to deny the Industrial Customers' and OMA's motions to intervene because their interests in this proceeding are too speculative. Moreover, disposition of this proceeding, which requires the application of the specific (and confidential) language in P4S members' contracts with FES, will not impair or impede the prospective intervenors' ability to protect their interests by instituting their own complaints against FES based upon the specific (and confidential) language in their individual contracts. If such complaints are filed and there is commonality in the language of all contracts and the factual and legal issues raised by complainants, the proper course is for the Commission to consider consolidation of the proceedings. However, unless and until the prospective intervenors' own complaints are filed, consolidation cannot be considered and the motions to intervene must be denied.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

I. INTRODUCTION

By Entry issued April 9, 2014, the Commission initiated a generic investigation into whether it was unfair, misleading, deceptive or unconscionable to market contracts as fixed-rate contracts or as variable-rate contracts with a guaranteed percent off the SSO rate when the contracts include pass through clauses. See *In the Matter of the Commission-Ordered Investigation of Marketing Practices in the Competitive Retail Electric Service Market*, Case No. 14-568-EL-COI, at 1. Among the Commission's generic inquiries was whether increased costs imposed by an RTO and billed to CRES suppliers may be categorized as a pass-through event that may be billed to customers in addition to the basic service price, and whether that practice is unfair, misleading, deceptive, or unconscionable. *Id.*, at 2.

P4S filed comments and replies in the generic investigation, and on July 3, 2014, upon authority from its individual members, filed a complaint against FES to adjudicate its members' individual rights pursuant to R.C. §§ 4928.16 and 4905.26. The P4S members' complaint alleges, based upon the specific language of their contracts with FES (filed under seal), how FES's pass through of the increased RTO costs violated various provisions of the Ohio Revised Code and Ohio Administrative Code, and sought relief specific to P4S' participating members.

The Industrial Customers, which did not participate in the generic proceeding, and OMA, which participated as a trade association, now claim to have a real and substantial interest in this proceeding adjudicating P4S members' individual rights. For the reasons

set forth herein, the Industrial Customers' and OMA's motions to intervene must be denied.

II. LAW

Ohio Admin. Code § 4901-1-11¹ permits intervention in a Commission proceeding when:

(A)***

(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 or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.²

III. ARGUMENT

The Prospective Intervenors Have Failed to Show That Disposition of This Proceeding May Impair or Impede Their Ability to Protect Their Speculative Interests.

As stated previously, the basis of P4S members' complaint is that FES violated various statutes and rules based upon the *specific language* of its members' contracts

¹ Ohio Admin. Code § 4901-1-11 is substantially similar to R.C. 4903.221.

² Ohio Admin. Code § 4901-1-11 further provides:

(B) 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 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.

with FES. The confidential contracts were filed under seal and the public version of the complaint was heavily redacted as to contractual terms and their application to the facts and law of this case. Neither the Industrial Customers nor OMA's members have disclosed the language of their contacts with FES, making it impossible to discern whether the application of law to P4S members' contacts may adversely affect their interests (R.C. § 4903.221), or "impair or impede" their ability to protect their interests (Ohio Admin. Code § 4901-1-11(A)(2)). Thus, the prospective intervenors' interest in this proceeding is too speculative to permit intervention. The Industrial Customers and OMA members are free to initiate their own complaint proceedings for the Commission to determine whether the specific language in their individual contacts violate applicable provisions of law.

1. Industrial Customers Interests

The Industrial Customers generally claim that they, too, have been assessed or threatened with assessment of FES's increased RTO costs, and that the relief P4S seeks will "affect" their interests, specifically through a determination whether FES has violated the law P4S cites in its complaint. As stated previously, the Industrial Customers have failed to show that the terms of their individual contracts are similar to those of P4S members. Thus, they have not shown that their interests be impaired or impeded and they could protect those interests in a complaint proceeding they initiate in which the applicable law would be applied to the specific language of their contracts.

The Industrial Customers also claim to have an interest in this proceeding because P4S members have requested the Commission to suspend FES's certificate. To be clear, P4S members made a conditional request that the certificate be suspended in the event

FES does not comply with the Commission's order within 30 days of its issuance in this case. The relief P4S seeks is to require FES's compliance with the order within 30 days. Further proceedings would be required to find FES's lack of compliance and the Industrial Customers' would have the ability to protect their interests in having FES continue as an electric supplier in that proceeding. Based on the conditional nature of the requested relief, the Industrial Customers' motion to intervene on this basis is too speculative.

2. OMA's Interest


OMA seeks to intervene as a trade association and its individual members are not asserting their rights under their contracts. OMA has not alleged that it has a contract with FES or is being charged the RTO Expense Surcharge. Thus, disposition of this proceeding will not affect OMA's rights to protect its interests. Those interests are limited to advocacy of behalf of its members on policy issues, which OMA has exercised in the related generic proceeding. OMA has no standing to intervene in this specific complaint case.

III. CONCLUSION

P4S respectfully requests that the Industrial Customers and OMA's motions to intervene be denied. The Industrial Customers and OMA have failed to show that they have a real and substantial interest in this proceeding or that its disposition would impair or impede their ability to protect their interests. For the reasons stated previously, their bases for intervention are unsubstantiated and too speculative. If the Industrial Customers, or OMA's members, choose to seek relief based upon their individual contracts with FES, they are free to file their own individual complaints. If such

complaints are filed and there is commonality in the language of all contracts and the factual and legal issues raised by complainants, the proper course is for the Commission to consider consolidation of the proceedings.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing *Memorandum Contra the Industrial Customers' and OMA's Motions to Intervene* was served by regular U.S. Mail or electronic mail this 4th day of August, 2014 on the persons listed below.



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Summary: Memorandum Contra Industrial Customers' and OMA's Motions to Intervene
electronically filed by Dane Stinson on behalf of Power4Schools