

**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 ) Case No. 16-743-EL-POR  
Energy Efficiency and Peak Demand )  
Reduction Program Portfolio Plans for )  
2017 through 2019. )

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**MOTION TO INTERVENE BY  
ENERGY MANAGEMENT SOLUTIONS, INC.**

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Energy Management Solutions, Inc. (“EMS”) hereby moves, pursuant to Ohio Revised Code §4903.221 and Ohio Administrative Code (“Ohio Adm. Code”) Rule 4901-1-11, to intervene in the above-captioned proceeding for the reasons set forth in the attached Memorandum in Support.

Respectfully submitted on behalf of

ENERGY MANAGEMENT SOLUTIONS, INC.

/s/Christopher J. Allwein

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**MEMORANDUM IN SUPPORT**

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**I. Introduction**

EMS seeks to intervene in this case, where FirstEnergy's 2017-2019 energy efficiency and peak demand reduction portfolio plan is subject to review and approval by the Public Utilities Commission of Ohio ("PUCO" or "Commission"). The Portfolio Plan includes certain programs to address industrial energy efficiency. EMS seeks to participate in these proceedings because EMS' business interests and its clients in the FirstEnergy Ohio service territory may be adversely affected by the Commission's rulings in this matter. The Application and subsequent proceedings will present several issues of interest to EMS, including but not limited to program structure and the incentive amounts that FirstEnergy customers may receive for certain, eligible energy efficiency and peak demand reduction retrofits.

These and other issues, which are a part of this proceeding, may directly impact EMS and its clients' interests in the development of energy efficiency projects, actual savings generated by FirstEnergy customers, and the ability of EMS and its clientele to contribute to the State's competitiveness in the global economy. EMS clients residing in the FirstEnergy Companies'

service area have a direct interest in assuring that FirstEnergy offers a wide variety of programs and measures with reasonable incentives. As such, EMS is entitled to intervene in these proceedings.

## **II. Legal Standard**

Ohio law provides that a party may intervene in a Commission proceeding if that party “may be adversely affected by a public utilities commission proceeding.”<sup>1</sup> To determine whether a party may be adversely affected for purposes of intervention, the Commission evaluates:

- (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.<sup>2</sup>

The Commission’s rules similarly provide that any person may intervene where “[t]he person has a real and substantial interest in the proceeding.”<sup>3</sup> The PUCO regulations set forth the same four standards that are established in Ohio Revised Code 4903.221(B) for determining whether a party may be “adversely affected,” and also purport to add a fifth factor regarding “the extent to which the person’s interest is represented by existing parties.”<sup>4</sup> As the Ohio Supreme Court has held, intervention in Commission proceedings “ought to be liberally allowed so that the

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<sup>1</sup> R.C. 4903.221.

<sup>2</sup> R.C. 4903.221(B).

<sup>3</sup> Ohio Adm. Code 4901-1-11(A)(2).

<sup>4</sup> Ohio Adm. Code 4901-1-11(B).

positions of all persons with a real and substantial interest in the proceedings can be considered by the [Commission].”<sup>5</sup> The Commission has consistently maintained a policy to “encourage the broadest possible participation” in its proceedings.<sup>6</sup>

**III. EMS is entitled to intervene under §4903.221 because EMS and its clients “may be adversely affected” by the outcome of this proceeding.**

EMS easily satisfies these liberal intervention standards and respectfully requests that its intervention be granted in this case. EMS satisfies each of the four statutory factors demonstrating that EMS and its clientele “may be adversely affected” by the outcome. First, the nature and extent of EMS’ interests in the proceeding are real and substantial, as the issues involved are directly related to EMS’ business, which is to provide energy conservation and management services for businesses to help strengthen their bottom line and to help organizations make real and lasting conservation improvements that optimize energy usage and reduce power consumption. EMS has audited over 10,000 Facilities and saved clients and customers over \$500,000,000 in energy costs. EMS has audited over 175 industrial sites in Ohio, where more than ninety percent of its clientele is located.

The positions advanced by EMS will bear directly on the merits of this proceeding. Among other concerns, EMS is focused on the proposed mercantile program structure and incentive funding, in particular as it relates to combined heat and power and waste energy recovery facilities.

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<sup>5</sup> *Ohio Consumers’ Counsel v. Pub. Util Com’n of Ohio* (2006), 111 Ohio St. 3d 384, 388, 2006 Ohio 5853, 856 N.E.2d 940.

<sup>6</sup> See e.g. *In the Matter of the Application of The Dayton Power and Light Company*, 2009 WL 322883 at 1, Ohio PUC February 5, 2009 (Commission granted motion to intervene in light of policy to encourage participation, despite party’s failure to file within the deadline).

Second, EMS' intervention will not unduly prolong or delay this proceeding, as EMS' intervention is timely filed<sup>7</sup> and EMS is able to comply with all case management deadlines established by the Commission and/or agreed to by the parties.

Third, intervention by EMS will significantly contribute to the full development of the record in this proceeding. EMS will bring significant expertise to bear in this proceeding. The staff and consultants employed by EMS have extensive experience in commercial and industrial energy efficiency, usage, planning and peak demand reduction procedures and programs. As such, EMS should be permitted to intervene pursuant to Ohio Revised Code §4903.221.

**IV. EMS may intervene because it has a “real and substantial interest” in the proceeding under Ohio Administrative Code 4901-1-11(B).**

EMS may also intervene in these proceedings because it satisfies each of the five factors listed in the PUCO rules demonstrating that EMS has a “real and substantial interest” in the proceeding. The first four factors are identical to those set forth under §4903.221(B) and therefore, EMS should be permitted to intervene for the same reasons as set forth in Section III above. As for the fifth factor, the interests of EMS in these proceedings will not be fully represented by other parties, because none of the other parties can adequately represent EMS' interest as an efficiency expert with significant and specific experience in the development, deployment and installation of energy efficiency and peak demand reduction retrofits, facilities and programs.

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<sup>7</sup> EMS is filing this motion ahead of the intervention deadline of June 14, 2016, presented in the procedural schedule (page 3) in the Entry dated May 23, 2016.

**V. Conclusion**

EMS meets the intervention criteria of Section 4903.221 and satisfies the standards set forth in the Commission's rule for intervention contained in Ohio Administrative Code Rule 4901-1-11, including that its motion is timely and is made by a person with a real and substantial interest in the outcome of this proceeding. For the foregoing reasons, EMS respectfully requests that the Commission grant its motion to intervene.

Respectfully submitted on behalf of

ENERGY MANAGEMENT SOLUTIONS, INC.

/s/Christopher J. Allwein

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion and Memorandum in Support were delivered via electronic mail on this 3rd day of June, 2016 to the following parties.

/s/Christopher J. Allwein  
**Christopher J. Allwein**

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Summary: Motion to Intervene electronically filed by Mr. Christopher J. Allwein on behalf of Energy Management Solutions, Inc.