

**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.)	

**REPLY OF
ENERGY MANAGEMENT SOLUTIONS, INC.
TO
FIRSTENERGY’S MEMORANDUM CONTRA FOR INTERVENTION**

I. INTRODUCTION

On June 3, 2016, Energy Management Solutions, Inc. (“EMS”) moved for intervention in this case, pursuant to Ohio Revised Code §4903.221 and Ohio Administrative Code (“Ohio Adm. Code”) Rule 4901-1-11. As presented in the motion, EMS demonstrated that it has a real and substantial interest in the proceeding, and that those interests may be adversely affected by the Commission’s ruling in this proceeding.

FirstEnergy seeks to prevent EMS from protecting its interests, which are directly aligned with Ohio statutory policy and which could be negatively affected by the Companies’ offerings or process. Unfortunately, FirstEnergy demonstrates its continuing hostility towards the development of effective energy efficiency programs by attempting to marginalize the interests of a for-profit business – specializing in commercial and industrial energy efficiency – and strangely attempting

to limit intervention in Commission cases to trade associations.¹ Recent Commission precedent demonstrates that the Commission seeks broad intervention from diverse parties. More specifically, groups like EMS have been granted intervention and provide an important perspective - different from the general interests of industrial representatives – in energy efficiency and peak demand reduction portfolio cases. Therefore, EMS respectfully requests that the Commission grant intervention to EMS and reject FirstEnergy’s attempt to capriciously limit intervention in this case.

II. REPLY

A. EMS Should be Granted Intervention Because Well-Established Case Precedent Encourages Broad Intervention in PUCO Proceedings.

Ohio case precedent encouraging broad participation in PUCO proceedings is well-established. As stated in EMS’ original motion, the Ohio Supreme Court, in *Ohio Consumers’ Counsel v. Public Utilities Commission*, stated unequivocally that the PUCO should allow wide participation:

In our view [...] intervention ought to be liberally allowed so that the positions of **all persons with a real and substantial interest** in the proceedings can be considered by the PUCO.² (Emphasis added).

Further, the Commission has adopted and maintained this precedent. In recent matters, Attorney Examiners have granted interventions – even out of time – in order to allow parties to protect their interests, citing to the Court’s precedent on favoring intervention:

¹ See FirstEnergy’s Memorandum Contra at 1-3 (June 8, 2016).

² *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.

The attorney examiner notes that the Supreme Court of Ohio has held that statutes and rules governing intervention should be "**generally liberally construed in favor of intervention.**" *Ohio Consumers' Counsel v. Pub. Util Comm.* (2006), 111 Ohio St.3d 384 (quoting *State ex rel Polo v. Cuyahoga Cty. Bd. Of Elections* (1995), 74 Ohio St.3d. 143, 144).³ (Emphasis Added).

The attorney examiner granted intervention in that case. Intervention should also be granted to EMS in this case. EMS demonstrated that it has a real and substantial interest in this proceeding in its original motion. FirstEnergy is correct that EMS consults and works with Ohio businesses to assist in mining energy savings critical to maintaining the competitiveness of those businesses. EMS does not seek to represent those businesses here, but seeks to represent its interests in maximizing the energy savings potential at Ohio commercial and industrial facilities by providing input on energy efficiency programs, incentives and process. This aligns with Ohio's statutory policy to "facilitate the state's effectiveness in the global economy."⁴ And it is similar to the interests of other groups that have intervened in similar, previous proceedings.

EMS' business interests are in part tied in a real and substantial way to the offerings of Ohio utilities seeking to provide incentives and programs to customers for energy efficiency. Incentives must be appropriate for corresponding projects in order to motivate action on the part of customers. Contrary to FirstEnergy's unsupported speculation, EMS is interested in providing input on incentives and programs that will motivate action and achieve significant savings (which serve to assist FirstEnergy with its benchmark requirements) rather than simply seeking "the highest possible program incentives."⁵

³ *In the Matter of the Application of The Dayton Power and Light Company For Approval of its Electric Security Plan*, Case No. 08-1094-EL-SSO, et al, Attorney Examiner Entry at 3, (February 5, 2009).

⁴ R.C. 4928.02(N).

⁵ FirstEnergy Memo Contra at 7.

EMS' interest in energy savings is a real and substantial interest that could be affected by the outcome of this proceeding. FirstEnergy offers no case precedent or foundation of support for *any* of their unsubstantiated speculation. EMS has demonstrated that it has a real and substantial interest in this proceeding. Thus, EMS' motion to intervene in order to review, comment and participate in this proceeding should be granted.

B. Other Entities Similar to EMS have Successfully Intervened and Participated in Recent Energy Efficiency and Peak Demand Reduction Portfolio Cases.

In other recent Energy Efficiency and Peak Demand Reduction Program Portfolio ("EE/PDR") cases, the Commission has allowed intervention of entities similar to EMS. In a recent Dayton Power and Light EE/PDR case, intervention was granted to EMC Development Company, Incorporated ("EMC"). In its motion to intervene, EMC described itself as an energy efficiency consultant:

EMC is a privately owned small business which develops and invests in clean energy projects. Over the past three years, EMS has specifically focused on the energy efficiency sector. During that time, EMC has partnered with building owners and energy efficiency contractors across Ohio to qualify energy efficiency projects as resources in the PJM capacity market.⁶

EMC's motion to intervene was granted.⁷ Similarly, in FirstEnergy's last set of POR cases, Enernoc, Incorporated ("Enernoc") moved for intervention. Enernoc described itself as offering energy efficiency services: "EnerNOC provides demand response and energy efficiency programs

⁶ *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its Energy Efficiency and Peak Demand Reduction Portfolio Programs*, Case No. 13-431-EL-POR, EMS Motion to Intervene at 4 (June 27, 2013).

⁷ *Id.*, Attorney Examiner's Entry at 2 (August 19, 2013).

to Ohio retail customers....”⁸ Enernoc further described itself as “...a leading developer and provider of clean and intelligent energy solutions to commercial, institutional, and industrial end-use customers....”⁹ Enernoc’s intervention was granted.¹⁰ Even though other entities representing industrial organizations intervened in the case (IEU, OHA and OMAEG), FirstEnergy did not object to Enernoc’s intervention, despite the fact that Enernoc is a for-profit entity.¹¹

C. FirstEnergy Fails to Demonstrate that EMS will Delay the Proceeding or not Significantly Contribute to the Full Development of Factual Issues.

In its Memorandum Contra, FirstEnergy does not state that EMS’ intervention will delay the proceeding or that EMS will not contribute significantly to the issues in the case. EMS will not delay the proceeding. As noted in its Motion, EMS is knowledgeable on the subject matter. EMS stated that its expertise will allow it to significantly contribute to the case. Portfolio cases are more than just a determination of whether they are just and reasonable.

Ohio Administrative Code 4901:1-39-04 provides a list of other considerations, many of which have to do with program design and participation rates. These are the interests of EMS. These interests are not represented by other intervenors, who may be more concerned with program cost and do not hold themselves out as energy efficiency experts.

⁸ *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 Nos. 12-2190-EL-POR, et al, Enernoc Motion to Intervene at 1, (August 20, 2012).

⁹ *Id.* at 2.

¹⁰ *Id.*, Attorney Examiner Entry at 2 (October 16, 2012).

¹¹ FirstEnergy Memo Contra at 5. EMS does not take issue with Enernoc, nor their Motion to Intervene in those previous cases or this case, nor any alleged “profit motive” the entity may possess. Rather, EMS is merely pointing out that other for-profit consultants, purveyors and vendors have intervened in FirstEnergy cases without question from the Companies.

III. 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 and reject FirstEnergy's arguments.

Respectfully submitted on behalf of

ENERGY MANAGEMENT SOLUTIONS, INC.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply were delivered via electronic mail on this 15th day of June, 2016 to the following parties.

/s/Christopher J. Allwein

Christopher J. Allwein

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