

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Filing by)
FirstEnergy Solutions Corp. of a)
Petition for Reorganization Under) Case No. 18-569-EL-UNC
Chapter 11 of the United States)
Bankruptcy Code.)

MEMORANDUM IN SUPPORT

I. Introduction

On March 31, 2018, FirstEnergy Solutions Corp. (“FES”) and several affiliates filed for reorganization under Chapter 11 of the Bankruptcy Code. *In re FirstEnergy Solution Corp. et al.*, Case No. 18-50757, Petition (Bankr. N.D. Ohio Mar. 31, 2018) (“*FES Bankruptcy*”). In response, the Commission opened this investigation. Entry (Apr. 4, 2018). For the reasons, discussed below, the Commission should grant the motion of IEU-Ohio to intervene.

II. Legal Requirements for Intervention

R.C. 4903.221 provides:

Any other person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding, provided:

(A) That such other person files a motion to intervene with the commission no later than:

(1) Any specific deadline established by order of the commission for purposes of a particular proceeding; or, if no such deadline is established;

(2) Five days prior to the scheduled date of hearing. The public utilities commission may, in its discretion, grant motions to intervene which are filed after the deadlines set forth in divisions (A)(1) and (2) of this section for good cause shown.

(B) That the commission, in ruling upon applications to intervene in its proceedings, shall consider the following criteria:

(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.

See, also, Rule 4901-1-11, OAC. Under R.C. 4903.221 and the Commission's rule, the Commission is to liberally grant intervention. *Ohio Consumers' Counsel v. Pub. Utils. Comm'n of Ohio*, 111 Ohio St. 3d 384 (2006).

III. IEU-Ohio has an interest that may be affected by this matter. This interest extends to not only the FES contracts for service but also the transferees of those contracts and the effect of a default on other Commission regulated services provided by electric distribution utilities ("EDU") for IEU-Ohio members.

IEU-Ohio is an association of ultimate customers. A current listing of IEU-Ohio member companies is available on IEU-Ohio's website at http://www.ieu-ohio.org/member_list.aspx. IEU-Ohio's members purchase substantial amounts of electric services from competitive retail electric service ("CRES") providers subject to the jurisdiction of the Commission including FES.

IEU-Ohio's members work together to address matters that affect the availability and price of utility services. Additionally, IEU-Ohio seeks to promote customer-driven policies that will assure an adequate, reliable, and efficient supply of energy for all consumers at competitive prices. To this end, IEU-Ohio has worked and will continue to work to produce legislative, regulatory, and market outcomes that are consistent with the State electric services policy contained in R.C. 4928.02.

This investigation concerns a petition for bankruptcy filed by FES and several affiliates for reorganization under Chapter 11 of the United States Bankruptcy Code. While the petition triggers an automatic stay of adverse actions against the assets of the

debtor and affords the debtors the right to avoid certain obligations, the Commission retains regulatory authority. 11 U.S.C. § 362(b)(4).

FES has indicated through a motion granted by the bankruptcy court that it intends to continue to maintain and administer its customer programs. *FES Bankruptcy, Order Authorizing the Debtors to (I) Maintain and Administer Customer Programs and Perform under Customer Agreements, (II) Honor Obligations Related Thereto, and (III) Establish Procedures for Notifying Customers in the Debtors' Chapter 11 Cases* (Apr. 4, 2018). However, it has also signaled its intention to transfer its competitive supply business. http://www.cleveland.com/business/index.ssf/2018/04/firstenergy_solutions_consumer_1.html. Thus, the bankruptcy proceeding presents new issues regarding FES's contract performance that may directly affect customers.

In its Entry, the Commission has directed FES to explain its plans for continuing service to its existing and new customers and how it has met and will continue to meet its obligations to satisfy collateral or other financial obligations. Entry, ¶ 7 (Apr. 4, 2018). Customers have a direct interest in the information that the Commission is seeking from FES and the Commission's regulatory response to that information.

Because FES has indicated its intention to transfer its retail contracts to one or more third parties, the transfer may trigger additional concerns about the ability of the transferees to provide adequate assurance of performance. As parties to the contracts that may be transferred, customers have an interest in the Commission's investigation and possible regulatory response to any attempted transfer.

The bankruptcy also may affect arrangements that FES customers have with EDUs. If assignment of retail contracts to a new party is not accomplished and FES

subsequently elects to reject those contracts, termination of contracts may constitute a default that would result in a customer's unwanted return to a standard service offer. R.C. 4928.14. To avoid unwanted returns to default service, customers have an interest in assisting the Commission in identifying any rule or tariff provisions that need to be addressed to assure a smooth transfer of service.

A change to the default service provider may also adversely affect IEU-Ohio members' participation in transmission pilot programs since some of these programs require customers to take generation service from CRES providers. See, e.g., *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Supplemental Stipulation and Recommendation at 3 (May 28, 2015). Under the FirstEnergy transmission pilot, participating customers are permanently removed if they voluntarily return to the EDU's transmission service. *Id.* at 4. While a return to the standard service offer due to a contract rejection would not be a voluntary return, IEU-Ohio members participating in the pilot have an interest in the Commission's clarification of their right to continue in the pilot if they are involuntarily returned to the standard service offer.¹

While the list of customers concerns may not be exhaustive, it does demonstrate that customers with contracts with FES, including members of IEU-Ohio, have an interest that may be affected by this matter that justifies intervention.

¹ Even if there is an assignment, customers have an interest in retaining the ability to continue in the pilot if they are assigned to a different CRES provider.

IV. IEU-Ohio's intervention is timely, will not unduly delay the proceeding, and will assist in the full development of issues and an equitable outcome

IEU-Ohio's participation will not unduly prolong or delay this proceeding. This intervention motion is timely under Commission rules. Further, IEU-Ohio is an experienced participant in Commission proceedings.

IEU-Ohio's participation also will contribute to the full development and equitable resolution of the factual issues. As a party with significant experience in regard to the issues involving the provision of competitive retail electric service and of utility services by rate regulated utilities in various Commission proceedings, IEU-Ohio can provide the Commission with a point of view of the matter before the Commission from the large industrial customer's prospective. This insight and experience will assist the Commission in reaching an equitable outcome.

V. Conclusion

Based on these representations, IEU-Ohio is 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. Therefore, the Commission should grant its Motion to Intervene.

Respectfully submitted,

/s/ Frank P. Darr

Frank P. Darr (Reg. No. 0025469)

(Counsel of Record)

Matthew R. Pritchard (Reg. No. 0088070)

MCNEES WALLACE & NURICK LLC

21 East State Street, 17TH Floor

Columbus, OH 43215

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

fdarr@mwncmh.com

mpritchard@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Intervene and Memorandum In Support of Industrial Energy Users-Ohio* was served upon the following party via U.S. Mail, postage prepaid on this 10th day of April, 2018.

Benjamin Rich
FirstEnergy Solutions
341 White Pond Drive
Building B-3
Akron, OH 44320

/s/ Frank P. Darr

Frank P. Darr

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/10/2018 4:27:01 PM

in

Case No(s). 18-0569-EL-UNC

Summary: Motion Motion to Intervene and Memorandum in Support of Industrial Energy Users-Ohio
electronically filed by Mr. Frank P Darr on behalf of Industrial Energy Users-Ohio