

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Filing By First	)	
Energy Solutions Corp. of a Petition for	)	Case No. 18-0569-EL-UNC
Reorganization Under Chapter 11 of the	)	
United States Bankruptcy Code.	)	

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**MOTION TO INTERVENE**

**BY**

**DUKE ENERGY OHIO, INC.**

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Now comes Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) and moves to intervene as a full party of record in the above-captioned proceedings pursuant to R.C. 4903.221 and O.A.C. 4901-1-11. As more fully explained in the accompanying memorandum in support, Duke Energy Ohio has a real and substantial interest in these proceedings that is not adequately represented by existing parties and is so situated that the disposition of these proceedings may impair or impede its ability to protect that interest. Therefore, Duke Energy Ohio respectfully requests that the Public Utilities Commission of Ohio (Commission) grant this timely request to intervene and the Duke Energy Ohio be made a party of record to these proceedings.

Respectfully submitted,

DUKE ENERGY OHIO, INC.



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## **MEMORANDUM IN SUPPORT**

### **I. Introduction**

The bankruptcy filing of FirstEnergy Solutions Corp. (FES) uniquely affects electric distribution utilities including Duke Energy Ohio. Duke Energy Ohio has contractual and regulatory obligations relating to FES's role as a CRES Provider in Duke Energy Ohio's service territory, including an obligation to provide default service to FES's retail customers within the Duke Energy Ohio service territory should FES be unable to continue to serve them. Duke Energy Ohio appreciates the Commission's acknowledgement of these EDU interests through the questions raised in the April 4, 2018 Order in this docket. For example, Duke Energy Ohio appreciates question number seven of the Order, asking "whether FES has met its obligations to provide collateral or other financial guarantees or other assurances to the electric distribution utilities in whose certified territories FES continues to operate."

### **II. Legal Standard**

R.C. 4903.221(B) sets forth the criteria that the Public Utilities Commission of Ohio (Commission) is required to consider in ruling on applications to intervene. These criteria include:

- (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>1</sup>

The Commission has provided additional detail on the intervention requirements through the promulgation of O.A.C. 4901-1-11. Specifically, that rule requires that the Commission

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

allow intervention by a person who has a “real and substantial interest in the proceeding” and who “is so situated that the disposition of the proceeding may...impair or impede [their] ability to protect that interest, unless the person’s interest is adequately represented by existing parties.”<sup>2</sup> Consistent with the statutory provisions, the rule also lists several factors for the Commission to consider in determining whether a potential intervenor meets that standard:

- (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.<sup>3</sup>

As discussed below, Duke Energy Ohio satisfies these criteria and its intervention in these proceedings is therefore warranted.

### **III. Duke Energy Ohio Should be Granted Intervention in These Proceedings.**

Duke Energy Ohio has a real and substantial interest in these proceedings that is directly related to the merits of the case. No existing party represents Duke Energy Ohio’s interests. Further, Duke Energy Ohio’s participation will contribute to the development of the issues and an equitable resolution. As no deadline for intervention has been set in these proceedings, Duke Energy Ohio’s intervention will not unduly prolong or delay them and its interests are not represented by existing parties.

Duke Energy Ohio therefore respectfully requests that the Commission grant its motion to intervene and that it be made a full party of record.

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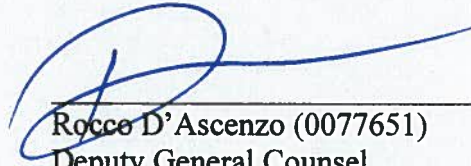
<sup>2</sup> O.A.C. 4901-1-11(A).

<sup>3</sup> O.A.C. 4901-1-11(B).



Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 20<sup>TH</sup> day of APRIL 2018, by electronic transmission or U.S. mail, postage prepaid, upon the persons listed below.



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Summary: Motion Motion to Intervene by Duke Energy Ohio, Inc. electronically filed by Mrs. Adele M. Frisch on behalf of Duke Energy Ohio, Inc. and D'Ascenzo, Rocco O and Watts, Elizabeth H