

FILE

5

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED 10045 000000  
01 MAY -1 PM 4:16

In the Matter of the Complaint of )  
DOMINION RETAIL, INC. )  
 )  
Against )  
 )  
Ohio Edison Company, The Cleveland Electric )  
Illuminating Company and The Toledo Edison )  
Company )  
 )  
for Refusal to Permit Participation )  
in the Market Support Generation Program. )

PUCO

Case No. 00-2526-EL-CSS

COMPLAINANT'S MEMORANDUM CONTRA TO  
SHELL ENERGY SERVICES COMPANY, L.L.C. INTERLOCUTORY APPEAL AND  
APPLICATION FOR REVIEW OF ATTORNEY EXAMINER ENTRY

I. INTRODUCTION

Pursuant to Rule 4901:1-1-12 of the Ohio Administrative Code ("O.A.C."), Dominion Retail, Inc. ("Dominion") submits this Memorandum Contra to Shell Energy Services Company, L.L.C.'s ("Shell") Interlocutory Appeal and Application for Review of Attorney Examiner Entry ("Entry") filed with the Public Utilities Commission of Ohio ("Commission") on April 10, 2001. Shell's Interlocutory Appeal and Application for Review represent a thinly disguised attempt to address the merits of the case, which, if to be made at all, are properly argued at the conclusion of the public hearing in this matter. Shell's arguments are entirely inappropriate because they address issues far afield of why Shell should or should not be granted intervention in this matter. Moreover, Shell's Motion to Intervene and Interlocutory Appeal add nothing to its original

This is to certify that the images appearing are an  
accurate and complete reproduction of a case file  
document delivered in the regular course of business.

748814v1

Technician JS Date Processed 5-1-01

Motion to Intervene and still fail to demonstrate a real and substantial interest in this proceeding which would justify intervention.

## II. ARGUMENT

This case involves facts unique to Dominion and its position as a potential recipient of MSG. Dominion has been consistently treated differently from other competitive retail electric service providers in the FirstEnergy service territories. As a result, it is necessary at this juncture for Ohio Edison Company, The Cleveland Electric Illuminating Company and Toledo Edison ("FirstEnergy") to defend its handling of MSG claims only to the extent Dominion is involved. Shell claims that it has a "real and substantial interest" in this matter because it is positioned behind Dominion in the MSG "queue." This is not a compelling argument because there are potentially many other entities that either are or could be potentially behind Dominion in line for MSG. Permitting intervention on this basis would be contrary to the requirements set forth in O.A.C. Rule 4901:1-1-11 and could open a floodgate of intervention requests by other CRES providers with equally attenuated grounds for intervention.

Additionally, Shell argues that "but for" Dominion's Amended Complaint, Shell's customers would be saving money on electricity today through receipt of their MSG capacity allocation. Likewise, this is not a compelling argument. As a result of FirstEnergy's settlement of its electric transition case,<sup>1</sup> 1120 mw of system level market support generation has been made available on a first come, first served basis. This is a finite amount of market support generation. Inevitably, some entities will obtain a portion of this generation and some will not. Only a finite

---

<sup>1</sup> *In the Matter of the Application of FIRSTENERGY CORP. on behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company and Toledo Edison For Approval of Electric Transition Plan*, Case No. 99-1212-EL-ETP.

number of customers in each of FirstEnergy's service territories will enjoy the benefits of MSG, while others will not. That it might be Shell's customers who do not make the cut is of no significance in resolving the issues in this particular matter. The entire 1120 MW of FirstEnergy electricity will be used to serve Ohio customers.

In addition to demonstrating a "real and substantial interest in the proceeding," O. A. C. Rule 4901:1-1-11 requires a party to show that its interests are not otherwise adequately protected and that it can make a potential contribution to a just and expeditious resolution of the issues involved in the proceeding. In the first instance, FirstEnergy is in the best position to protect Shell's interests to the extent Shell has an "interest" in MSG. FirstEnergy undertook unilaterally to formulate and police a process by which MSG has been distributed. FirstEnergy and Dominion are uniquely positioned to know and understand the details relevant to how the process was applied to Dominion and the equities with regard to the manner in which Dominion's claims were made and "perfected". Whether or not the Commission finds that the process was appropriate vis-à-vis Dominion, the position of Shell and the others behind Shell in the queue remain exactly the same. Thus, Shell's interest is more than adequately protected in this proceeding because it does not change regardless of the outcome.

Secondly, Shell is not in a position to contribute to a just and expeditious resolution of the issues involved in this proceeding. Shell has demonstrated as much in its Interlocutory Appeal and Application for Review. Shell mischaracterizes and unnecessarily disparages Dominion without any knowledge of the facts relevant to the issues in this case. Indeed, Shell accuses Dominion of "gaming," and without knowledge of any facts, asserts that Dominion's MSG claims are "speculative" without any support for its assertion. Such uninformed and

argumentative assertions do not contribute to a “just and expeditious resolution” of this matter and, indeed, they unnecessarily delay resolution.

The Attorney Examiner correctly noted in the Entry that Shell’s stated interest in this matter relates merely to any precedent which might be set. The Commission has long held that such an interest is not a sufficient basis upon which to grant intervention. As recently as March 2000, the Commission stated:

The Commission has consistently denied intervention requests when the person’s interest is that legal precedent may be established which may affect that person’s interest in a subsequent case. To grant intervention on this basis would render the Commission’s rule on intervention meaningless and allow almost any person intervention in any case based on the proposition that the precedent established may affect them in some future case.<sup>2</sup>

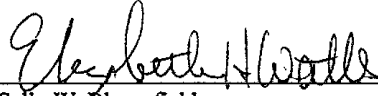
Shell has nothing more than an interest in the legal precedent which may be established in this case. Thus, Shell has again failed to demonstrate a cognizable “real and substantial interest” in this matter and its intervention would only serve to delay the case. Shell cannot facilitate a just and expeditious resolution and should be denied intervention.

Finally, the Entry has set forth the extent to which Shell may participate in this matter. The Attorney Examiner noted that Shell may monitor public hearings and file briefs post hearing. Shell must not be permitted to unduly expand upon this ruling for the reasons set forth above.

---

<sup>2</sup> *In the Matter of the Application of FIRSTENERGY CORP. on behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company and Toledo Edison For Approval of Electric Transition Plan, Case No. 99-1212-EL-ETP. (March 23, 2000 Entry).*

Respectfully submitted,



Sally W. Bloomfield  
Elizabeth H. Watts  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, Ohio 43215  
(614) 227-2368; 227-2370; 227-2379  
sbloomfield@bricker.com  
ewatts@bricker.com

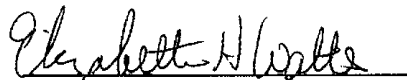
**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a copy of the foregoing Complainant's Memorandum Contra to Shell Energy Services Company, L.L.C. Interlocutory Appeal and Application for Review of Attorney Examiner Entry was served upon the following by regular mail, this 1st day of May, 2001:

Arthur E. Korkosz  
FirstEnergy Corp.  
76 South Main Street  
Akron, Ohio 44308

James Burk  
FirstEnergy Corp.  
76 South Main Street  
Akron, Ohio 44308

Gregory K. Lawrence  
McDermott, Will & Emery  
600 Thirteenth Street, N.W.  
Washington, D.C. 20005-3069

  
Elizabeth H. Watts