

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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REGISTERED-DOCKETING DIV
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In the Matter of the Application of)
FirstEnergy Corp. on Behalf of Ohio)
Edison Company, The Cleveland) Case No. 02-2877-EL-UNC
Electric Illuminating Company, and)
The Toledo Edison Company for)
Approval of Tariff Adjustments)

FirstEnergy's Memorandum Contra Citizen Power's Motion To Intervene

Comes now FirstEnergy Corp., by counsel, on behalf of its Ohio operating companies Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the "Companies") and, pursuant to 4901-1-12, hereby respectfully submits its Memorandum Contra Citizen Power's Motion To Intervene in this proceeding.

A Motion To Intervene was filed on November 12, 2002 by counsel for Citizen Power seeking the intervention of Citizen Power and four individuals ("Citizen Power").¹ The Companies oppose the intervention of Citizen Power and the four individuals on the grounds that such intervention does not meet the required criteria to justify intervention. These grounds are more fully set forth below.

In attempting to meet the required criteria for intervention, Citizen Power relies on the argument that since it was granted intervention in the FirstEnergy ETP case, Case No. 99-1212-EL-ETP et al., that it should be entitled to intervene in this proceeding. This is wrong

¹ The Motion represents that the individuals are trustees of Citizen Power and residential customers of CEI. The individuals do not appear to be represented by counsel in their individual capacity and did not sign the Motion to Intervene.

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and this argument has already been rejected by the Commission. In its Entry on Rehearing in Case No. 01-2736-EL-UNC, which was the Companies' shopping credit filing from last year, the Commission, in rejecting the same argument from Citizen Power, stated:

Further, we [Commission] do not agree with Citizen that its intervention in the FirstEnergy ETP case makes it a party to the instant application. We have not consolidated the two dockets nor incorporated the record from that case into this docket. Accordingly, Citizen's application for rehearing should be denied. *Entry on Rehearing*, Case No. 01-2736-EL-UNC at p. 3.

The fact that Citizen Power was granted interventions in earlier proceedings is not relevant and does not entitle Citizen Power to intervene in this case.² The same argument made this year by Citizen Power is equally without merit, and provides the Commission with no basis upon which to grant intervention to Citizen Power in this proceeding.

O.A.C. 4901-1-11 sets out the criteria to be used by the Commission in determining whether to grant intervention. Those criteria include the nature of the person's interest, the extent to which the person's interest is represented by existing parties, the person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding, and whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice any existing party.³ Based upon these criteria, the Commission should deny the intervention of Citizen Power.

Citizen Power makes little attempt to define an interest in this proceeding other than general references to being a customer of CEI and a passing reference to competitive choices. This is not a sufficient interest. If this were the standard, then every customer on the Companies' systems could be granted intervention, which would result in proceedings that

² Citizen Power's Motion to Intervene in Case No. 99-1212-EL-ETP was not opposed.

were wholly unworkable from an administrative standpoint. R.C. 4901.13 permits the Commission to control its own proceedings, including the discretion to grant or deny requests to intervene. *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559 (1982). Citizen Power has identified no unique or identifiable interests that differentiate it from ordinary members of the public.

The second criteria is whether the person's interest is adequately represented by an existing party. The answer to this question is clearly yes. Based upon how Citizen Power defined its alleged interest, it is no different than any other customer on the Companies' systems. The Office of Consumers' Counsel ("OCC") has already intervened in this proceeding under its statutory right to do representing all residential customers of the Companies. Further, OCC subsequently filed a document styled as a "Protest" where it clearly states its opposition to the Companies' proposed reductions to the existing shopping credits. Therefore, the concerns raised by Citizen Power are fully subsumed within the representation of OCC.

In an earlier proceeding, involving a group similar to Citizen Power, the Supreme Court of Ohio ruled that the interests of the group were adequately represented by OCC, thereby upholding the Commission's determination to deny intervention. *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559 (1982). In the *Toledo Safe Energy* case, the group named Toledo Coalition for Safe Energy, which represented about 200 residential customers, sought to intervene in a CEI base rate proceeding and oppose the inclusion of the costs of the Davis Besse plant in rates. The Commission denied intervention to the group on the basis that its interests were adequately represented by the OCC and the outcome of the

³ Similar criteria are set out in R.C. 4903.221.

issues in the case would not affect subgroups of residential customers differently than residential customers as a whole. *Id.* As the Court stated “the rate base and operating income proceeding at bar does not present issues of competing, limited, identifiable interests which differentiate prospective intervenors, like appellant, from ordinary members of the public.” *Id.* The same is equally true regarding the present Motion to Intervene. Citizen Power’s interest is subsumed by the representation of OCC. They are not seeking a different result than OCC and the issues to be considered will be the same as those being addressed by OCC. As the Court further stated, just as is the case with the present Motion, a “. . . difference in strategy should not obscure the fact that the goal of appellant and Consumers’ Counsel was identical” *Id.*

The Court concluded that without a showing that the representation of OCC was inadequate, the intervention should be denied. The same should hold true with regard to the instant Motion. Unless Citizen Power can demonstrate how it will be affected differently by the outcome of the proceeding as compared to other customers or that OCC’s representation is inadequate, its intervention should be denied.

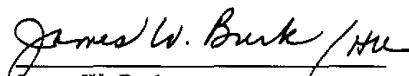
With interests similar to OCC, any potential contribution of Citizen Power to this proceeding will be duplicative of OCC’s efforts and would result in the unnecessary expenditure of time and resources to address this duplication, both on the part of the Companies and the Commission.

Finally, Citizen Power intervention in this case will cause undue delay and prejudice to the Companies and the process. In its Motion to Intervene, Citizen Power lists issues it apparently intends to pursue as part of this proceeding, most of which have already been

resolved by the Stipulation in Case No. 99-1212-EL-ETP and the Commission's ruling in Case No. 01-2736-EL-UNC, the shopping credit case from last year. For example, the Stipulation controls the length of the RTC period and the amounts collected thereunder, that will not be decided in this proceeding. Regarding their issues b. and c., the formula to determine whether the 20% shopping level has been attained is dictated by the Stipulation, not the outcome of this proceeding. The Commission has already rejected Citizen Power's argument in this regard. The same argument holds for their issue g. regarding the rate design for shopping incentives. This issue has already been addressed and resolved by the Commission in Case No. 01-2736-EL-UNC. Pursuit of all of any or all of these issues will unduly delay the proceeding and prejudice both the Companies and the Commission through having to devote time and resources to relitigating issues that have already been resolved by the Commission. As to the issues remaining on the list, those are the types of issues that OCC or others already in the case will pursue and the intervention of Citizen Power would be duplicative.

Citizen Power has not shown that it meets the criteria for intervention in this proceeding. Accordingly, the Companies urge Commission should deny the Motion to Intervene filed by Citizen Power.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing FirstEnergy Corp. Memorandum Contra Citizen Power Motion To Intervene has been served upon all parties of record this 27th day of November, 2002 by regular first class mail, postage prepaid.

James W. Burk / HLL

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