

**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 a New       ) Case No. 10-176-EL-ATA  
Rider and Revision of an Existing Rider.       )

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**MOTION TO INTERVENE  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential utility customers, moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant the OCC's intervention in this proceeding where an application has been filed by Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for the approval of rate credits for residential consumers commonly referred to as "all-electric" customers.<sup>1</sup> The OCC's Motion should be granted because the OCC meets the legal standards for intervention, as further explained in the attached Memorandum in Support.

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<sup>1</sup> See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

On February 12, 2010, Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (“FirstEnergy” or the “Companies”) filed their application (“Application”). The Application proposes adjustment of certain residential electric rates, which are applicable to some of the Companies’ approximately 1.9 million residential customers (i.e. those commonly referred to as “all-electric” customers). The OCC is the state agency that represents Ohio’s residential utility consumers. The Commission should grant the OCC’s Motion to Intervene in these proceedings so that it can fully participate in the proceedings and protect the interests of the Companies’ residential customers.

**II. INTERVENTION SHOULD BE GRANTED.**

The OCC moves to intervene in the above-captioned docket under its legislative authority, pursuant to R.C. Chapter 4911, to represent the interests of FirstEnergy’s 1.9 million residential customers. R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. Residential customers would be directly affected by the rate changes

proposed by FirstEnergy if they are approved by the Commission. Thus, this element of the intervention standard stated in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the PUCO to consider the following criteria in ruling on motions to intervene:

- (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 proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of the OCC's interest lies in FirstEnergy's proposal to establish new rates that would be paid by residential customers. It is essential that the interest of residential customers be represented inasmuch as the Company's plans would directly affect the rates paid by residential customers.

Second, the OCC's advocacy for residential consumers will include advancing the position that electric rates should be no more than what is reasonable and permissible under Ohio law for service that is adequate under Ohio law. This advocacy includes advancing the position that changing rates should be accurately and adequately communicated to residential customers in addition to being reasonable.

Third, the OCC's intervention will not unduly prolong or delay the proceeding, but should provide insights that will expedite the Commission's effective treatment of this proceeding. The OCC will significantly contribute to the full development and equitable resolution of the issues in this case based on its expertise in regulatory and energy matters.

Fourth, the OCC will significantly contribute to the full development and equitable resolution of the factual issues. The OCC has a demonstrated history of participation in cases that have affected or that could affect residential rates. The OCC is extremely concerned about the impact that FirstEnergy's rate design changes have had on all-electric households. Most recently, the OCC advocated in its testimony and briefs that FirstEnergy's proposal to terminate certain credits for high-use residential customers in Case No. 09-906-EL-SSO should not be permitted.<sup>2</sup> The Application largely deals with credits for these same residential customers. The Commission should grant the OCC's Motion to Intervene that will permit the full participation of the OCC in an evaluation of FirstEnergy's proposals.

The OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that the OCC satisfies in the Ohio Revised Code). To intervene, a party should have a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, the OCC has a real and substantial interest in these cases where the rates paid by residential customers are under review by the Commission.

In addition, the OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that the OCC has already addressed, and that the OCC satisfies.

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<sup>2</sup> See, e.g., *In re FirstEnergy's 2009 MRO Proposal*, OCC's Initial Post-Hearing Brief at 5 (January 8, 2010) ("Commission should reinstate the Residential Non-Standard Credit Provision in Rider EDR").

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the “extent to which the person’s interest is represented by existing parties.” While the OCC does not concede the lawfulness of this criterion, the OCC satisfies this criterion because the OCC has been uniquely designated as the statutory representative of the interests of Ohio’s residential utility consumers.<sup>3</sup> That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio has confirmed the OCC’s right to intervene in PUCO proceedings, in ruling on an appeal in which the OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying the OCC’s intervention and that the OCC should have been granted intervention.<sup>4</sup>

The OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio’s residential consumers, the Commission should grant the OCC’s Motion to Intervene.

### **III. CONCLUSION**

The above-captioned case affects residential customers through the change in rates that have been proposed by FirstEnergy. For the reasons stated above, the PUCO should grant the OCC’s Motion to Intervene on behalf of the residential customers of FirstEnergy.

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<sup>3</sup> R.C. Chapter 4911.

<sup>4</sup> *Ohio Consumers’ Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20 (2006).

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's *Motion to Intervene* was served upon the persons listed below via first class U.S. Mail, postage prepaid, this 23<sup>rd</sup> day of February 2010.

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