

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Delivery Capital            )  
Recovery Rider Contained in the Tariffs        ) Case No. 12-2855-EL-RDR  
of Ohio Edison Company, The Cleveland        )  
Electric Illuminating Company, and The        )  
Toledo Edison Company.                         )

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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") moves to intervene in this case<sup>1</sup> where the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy" or the "Utilities") are seeking to increase distribution rates for their residential and other customers as provided for in FirstEnergy's earlier electric security plan cases.<sup>2</sup> The OCC files on behalf of all the approximately 1.9 million residential utility customers of the Utilities. The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant the OCC's Motion are further set forth 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.

<sup>2</sup> *In re FirstEnergy ESP II Application*, Case Nos. 10-388-EL-SSO, et al., Opinion and Order at 11-12, 25 (August 25, 2010). See also *In re FirstEnergy ESP 3*, Case No. 12-1230-EL-SSO, et al., Opinion and Order at 10-11, 28-29 (July 18, 2012).

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

/s/ Larry S. Sauer

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**MEMORANDUM IN SUPPORT**

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This case involves the review of Rider DCR, the delivery capital recovery rider, by which FirstEnergy may increase distribution rates for its residential and other customers as authorized in FirstEnergy’s earlier electric security plan cases.<sup>3</sup> An Entry dated November 7, 2012, states that “any conclusions, results, or recommendations formulated by the auditor may be examined by any participant to this proceeding.”<sup>4</sup> The OCC has authority under law to represent the interests of all the approximately 1.9 million residential utility customers of FirstEnergy, pursuant to R.C. Chapter 4911.

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. The interests of Ohio’s residential customers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding that involves an investigation into the appropriateness of costs submitted by the Utilities in support of an increase in distribution rates for residential customers. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

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<sup>3</sup> Id.

<sup>4</sup> Entry at ¶6 (November 7, 2012).

R.C. 4903.221(B) requires the Commission 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 is representing the residential customers of FirstEnergy in this case involving an investigation into the appropriateness of costs submitted by the Utilities in support of an increase in distribution rates for residential customers. This interest is different than that of any other party and especially different than that of the utilities whose advocacy includes the financial interest of stockholders.

Second, the OCC's advocacy for residential customers will include advancing the position that rates should be no more than what is reasonable and lawful for service that is adequate under Ohio law. The OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio.

Third, the OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, the OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. The OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

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 advocate for residential utility customers, the OCC has a very real and substantial interest in this case where distribution rates for residential customers can ultimately be affected.

In addition, 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 OCC already has addressed and that OCC satisfies.

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 OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state-wide representative of the interests of Ohio's residential utility customers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed the OCC's right to intervene in PUCO proceedings, in deciding two appeals in which the OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in

denying the OCC's interventions and that OCC should have been granted intervention in both proceedings.<sup>5</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 residential customers, the Commission should grant the OCC's Motion to Intervene.

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

*/s/ Larry S. Sauer*

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<sup>5</sup> *Ohio Consumers' Counsel v. Public Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below via electronic transmission, this 2nd day of January 2013.

*/s/ Larry S. Sauer* \_\_\_\_\_  
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Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Sauer, Larry S.