

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the)	
Demand Side Management and Energy)	
Efficiency Riders of Ohio Edison)	Case No. 13-722-EL-RDR
Company, The Cleveland Electric)	
Illuminating Company and The Toledo)	
Edison Company.)	

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case in which the Public Utilities Commission of Ohio ("PUCO") is reviewing the collection of more than \$140 million dollars from the customers of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy"). FirstEnergy collected the money during calendar year 2012 through its Demand Side Management Efficiency Rider, which is intended to collect costs associated with FirstEnergy's energy efficiency, peak load reduction and demand-side management programs. OCC is filing on behalf of all of FirstEnergy's approximately 1.9 million residential electric customers.¹ The reasons the PUCO should grant OCC's Motion are set forth in the attached Memorandum in Support.

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

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Terry L. Etter

Terry L. Etter, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (614) 466-7964 (Etter direct)

etter@occ.state.oh.us

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the)	
Demand Side Management and Energy)	
Efficiency Riders of Ohio Edison)	Case No. 13-722-EL-RDR
Company, The Cleveland Electric)	
Illuminating Company and The Toledo)	
Edison Company.)	

MEMORANDUM IN SUPPORT

This case concerns the PUCO's review of FirstEnergy's Demand Side Management Efficiency Rider. The Rider is non-bypassable,² which means that all customers are subject to paying the Rider, regardless of whether they receive generation service from FirstEnergy or another company. Charges under the Rider are separated into two categories: Rider DSE1 is intended to collect FirstEnergy's costs associated with customers taking service under the Economic Load Response Rider and the Optional Load Response Rider; and Rider DSE2 is intended to collect FirstEnergy's costs associated with the implementation of programs in order for FirstEnergy to comply with the energy efficiency and peak demand reduction requirements of R.C.4928.55.³

During calendar year 2012, FirstEnergy collected \$22.6 million from customers through Rider DSE1.⁴ In addition, during 2012 FirstEnergy collected \$53.8 million from Ohio Edison customers, \$48.5 million from Cleveland Electric customers and \$15.2

² Demand Side Management and Energy Efficiency Rider (Rider DSE) Report in Support of Staff's 2012 Annual Review (March 29, 2013) at [1].

³ Id. at [1]-[2].

⁴ See id., Exhibit A at 1 and Exhibit C at 1.

million from Toledo Edison customers through Rider DSE2.⁵ Residential customers account for approximately \$49.3 million of the money FirstEnergy collected from customers through Rider DSE2 during 2012.⁶ OCC has authority under law to represent the interests of all of FirstEnergy's approximately 1.9 million residential utility customers, 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 involving the PUCO's review of the collection of millions of dollars from residential customers by the largest electric utility in Ohio. Thus, this element of the intervention standard 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 OCC's interest is representing FirstEnergy's residential customers in this case where FirstEnergy's collection of money from residential customers through the Demand Side Management Efficiency Rider is being

⁵ See *id.*, Exhibit B at 1-5, line (30) and Exhibit D at 1-5, line (30).

⁶ See *id.* The Economic Load Response Rider and the Optional Load Response Rider do not apply to residential customers. See Ohio Edison Company Tariff PUCO No. 11, Sheet 80, 8th Revised Page 1 of 2.

reviewed. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential customers will include advancing the position that rates should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law. 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, 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, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that 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, OCC has a very real and substantial interest in this case where FirstEnergy has collected millions of dollars from residential customers.

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 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 OCC’s right to intervene in PUCO proceedings, in deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying OCC’s interventions and that OCC should have been granted intervention in both proceedings.⁷

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 PUCO should grant OCC’s Motion to Intervene.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS’ COUNSEL

/s/ Terry L. Etter

Terry L. Etter, Counsel of Record
Assistant Consumers’ Counsel

Office of the Ohio Consumers’ Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-7964 (Etter direct)
etter@occ.state.oh.us

⁷ See *Ohio Consumers’ Counsel v. Pub. 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 service this 29th day of April 2013.

/s/ Terry L. Etter

Terry L. Etter

Assistant Consumers' Counsel

SERVICE LIST

William Wright
Chief, Public Utilities Section
Public Utilities Commission of Ohio
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
William.wright@puc.state.oh.us

Carrie M. Dunn
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308
cdunn@firstenergycorp.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/29/2013 1:04:26 PM

in

Case No(s). 13-0722-EL-RDR

Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Etter, Terry L Mr.