

**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) Case No. 17-0334-EL-ATA
Edison Company for Modification of a)
Tariff.)

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

In this case, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy" or the "Utility") submit an application to charge residential customers under a straight fixed variable rate design for base distribution rates. This would lead to a drastic increase in the customer charge for some customers from \$4 to \$25 by 2021.¹ OCC files this motion on behalf of FirstEnergy's 1.9 million residential electricity customers, who pay FirstEnergy's base distribution rates. The Public Utilities Commission of Ohio ("PUCO") should grant OCC's motion to intervene for the reasons set forth in the attached Memorandum in Support.

¹ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for a Modification of a Tariff*, Case No. 17-334-EL-ATA, Application at Exhibit C-3 Attachment 1 (April 3, 2017) (showing an increase to \$25.07 for customers of The Toledo Edison Company).

Respectfully submitted,

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OHIO CONSUMERS' COUNSEL

/s/ Kevin F. Moore

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MEMORANDUM IN SUPPORT

In this proceeding, FirstEnergy submits an application to begin using a straight fixed variable rate design to charge residential customers for base distribution rates. The Application states that the customer charge for Ohio Edison, The Cleveland Electric Illuminating, and The Toledo Edison Company will be raised from \$4.00 to \$23.84, \$18.87, and \$25.07, respectively.² Such a drastic increase in the customer charge is likely to have an adverse effect especially on low use (below 750 kWh a month) residential customers. OCC has authority under law to represent the interests of FirstEnergy's residential utility customers under 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 where the rate design and customer charge for residential customers is being drastically changed to the detriment of residential customers. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

² *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for a Modification of a Tariff*, Case No. 17-334-EL-ATA, Application at Exhibit C-3 Attachment 1 (April 3, 2017).

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 the residential customers of FirstEnergy in this case where FirstEnergy is drastically changing how it charges residential customers for base distribution rates. OCC's 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 how rates are paid for by consumers is important. For instance, the PUCO should consider the price signal sent to consumers when there is reduced costs for consuming an additional unit of energy. 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 involving the Utility's base distribution rates, which affect the rates residential customers pay for electric service.

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), which OCC already has addressed and which OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the PUCO 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, in deciding two consolidated appeals regarding OCC's right to intervene, the Supreme Court of Ohio has confirmed that "intervention ought to be liberally allowed."³ In those cases, OCC explained in its motion to intervene that the

³ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 2006-Ohio-5853, ¶ 20 (2006).

proceeding could negatively impact residential consumers, and OCC established that the interests of consumers would not be represented by existing parties.⁴ Because there was no evidence disputing OCC's position, nor any evidence that OCC's intervention would unduly delay the proceedings, the Supreme Court found that the PUCO could not deny OCC the right to intervene.⁵

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,

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/s/ Kevin F. Moore
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⁴ Id. ¶¶ 18-20.

⁵ Id. ¶¶ 13-20.

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 5th day of May 2017.

/s/ Kevin F. Moore

Kevin F. Moore

Assistant Consumers' Counsel

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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 Moore, Kevin F. Mr.