

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

| | | |
|--|---|-------------------------|
| In The Matter of the Energy Efficiency |) | |
| and Peak Demand Reduction Program |) | Case No. 17-1226-EL-EEC |
| Portfolio Status Report for the Ohio |) | Case No. 17-1227-EL-EEC |
| Edison Company, the Cleveland Electric |) | Case No. 17-1228-EL-EEC |
| Illuminating Company, and the Toledo |) | |
| Edison Company. |) | |

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

In this case, the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, the "Utilities") submit their annual report on their energy efficiency and peak demand reduction programs, which customers pay for. The Office of the Ohio Consumers' Counsel ("OCC") files this motion on behalf of the Utilities' 1.9 million residential electric customers. 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.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Christopher M. Healey

Christopher M. Healey (0086027)

Counsel of Record

Ajay Kumar (0092208)

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone [Healey]: (614) 466-9571

Telephone [Kumar]: (614) 466-1292

christopher.healey@occ.ohio.gov

ajay.kumar@occ.ohio.gov

(Both will accept service via email)

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

| | | |
|--|---|-------------------------|
| In The Matter of the Energy Efficiency |) | |
| and Peak Demand Reduction Program |) | Case No. 17-1226-EL-EEC |
| Portfolio Status Report for the Ohio |) | Case No. 17-1227-EL-EEC |
| Edison Company, the Cleveland Electric |) | Case No. 17-1228-EL-EEC |
| Illuminating Company, and the Toledo |) | |
| Edison Company. |) | |

MEMORANDUM IN SUPPORT

In this proceeding, the Utilities have filed their annual energy efficiency status report for their 2016 energy efficiency programs. The report includes information about the Utilities' compliance with statutory energy efficiency and peak demand reduction requirements, the performance of the Utilities' programs (including information on energy saved and participation rates), and program cost-effectiveness, among other things. OCC has authority under law to represent the interests of the Utilities' 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 Utilities are required to provide important information about their energy efficiency programs, which customers pay for. 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 the residential customers of the Utilities in this case where they provide their required annual report on their energy efficiency programs. OCC's 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, OCC's advocacy for residential customers will include advancing the position that the rates consumers pay for electric service (including charges for energy efficiency) should be no more than what is reasonable and lawful 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 real and substantial interest in this case involving the Utilities' energy efficiency programs, 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."¹ In those cases, OCC explained in its motion to intervene that the proceeding could negatively impact residential consumers, and OCC established that the interests of consumers would not be represented by existing parties.² Because there was no evidence disputing OCC's position, nor any evidence that OCC's intervention would

¹ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 2006-Ohio-5853, ¶ 20 (2006).

² *Id.* ¶¶ 18-20.

unduly delay the proceedings, the Supreme Court found that the PUCO could not deny OCC the right to intervene.³

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 WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Christopher M. Healey
Christopher M. Healey (0086027)
Counsel of Record
Ajay Kumar (0092208)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone [Healey]: (614) 466-9571
Telephone [Kumar]: (614) 466-1292
christopher.healey@occ.ohio.gov
ajay.kumar@occ.ohio.gov
(Both will accept service via email)

³ 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 23rd day of May 2017.

/s/ Christopher M. Healey
Christopher M. Healey
Assistant Consumers' Counsel

SERVICE LIST

William Wright
Public Utilities Commission of Ohio
30 E. Broad St., 16th Floor
Columbus, OH 43215
William.wright@ohioattorneygeneral.gov

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

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/23/2017 10:00:02 AM

in

Case No(s). 17-1226-EL-EEC, 17-1227-EL-EEC, 17-1228-EL-EEC

Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.