

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Update to the Distribution)
Modernization Rider Contained in the Tariffs of) Case No. 17-2280-EL-RDR
Ohio Edison, 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 where FirstEnergy¹ seeks approval of tariffs under which it will charge consumers for its Distribution Modernization Rider ("DMR Rider").² OCC is filing on behalf of the 1.9 million residential utility customers of FirstEnergy. The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ William Michael
William Michael (0070921)
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¹ Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company.

² See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

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MEMORANDUM IN SUPPORT

FirstEnergy³ seeks approval of tariffs under which it was authorized to charge consumers hundreds of millions of dollars for its DMR Rider.⁴ However, that authorization reflected a corporate income tax rate of 35 percent that has since been reduced to 21 percent as a result of the Tax Cuts and Jobs Act, effective January 1, 2018.⁵ Consumers should see the full benefit of that tax cut reflected in their 2018 rates that the Public Utilities Commission of Ohio (“PUCO”) approves in this case for collection from FirstEnergy’s customers. The Office of the Ohio Consumers’ Counsel (“OCC”) has authority under law to represent the interests of all the 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

³ Ohio Edison, The Cleveland Electric Illuminating Company and Toledo Edison Company (collectively “FirstEnergy”).

⁴ In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing at 95 (October 12, 2016).

⁵ See Tax Cuts and Jobs Act of 2017, Public Law No. 115-97.

customers were unrepresented in a proceeding that sets the rates that they pay for electric service. 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 FirstEnergy in this case involving setting the rates customers will pay under the DMR Rider. 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. That especially involves ensuring that the rates being collected from FirstEnergy's customers reflects a full year of benefits from the Tax Cuts and Jobs Act corporate income tax reduction from 35 percent to 21 percent that was effective January 1, 2018 . 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 is proposing rates that customers will pay under the DMR Rider.

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 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, 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.⁶

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/ William Michael
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Assistant Consumers' Counsel

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⁶ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene was served via electronic transmission upon the parties this 14th day of February 2018.

/s/ William Michael

William Michael

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 Michael, William J. Mr.